

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE:	§	CASE NO. 23-90147
	§	JOINTLY ADMINISTERED
MOUNTAIN EXPRESS OIL COMPANY,	§	HOUSTON, TEXAS
ET AL,	§	WEDNESDAY,
	§	AUGUST 16, 2023
DEBTORS.	§	4:00 P.M. TO 5:56 P.M.

**MOTION HEARING**

BEFORE THE HONORABLE DAVID R. JONES  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: SEE NEXT PAGE

**(RECORDED VIA COURTSPEAK)**

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1                   HOUSTON, TEXAS; WEDNESDAY, AUGUST 16, 2023; 4:00 P.M.

2                   THE COURT: Good afternoon, everyone. This is Judge  
3 Jones. The time is 4:00 o'clock Central, today is August 16,  
4 2023, this is the docket for Houston, Texas. On the 4:00  
5 o'clock docket we have the jointly administered cases under  
6 Case Number 23-90147, Mountain Express Oil Company.

7                   Folks, please don't forget to make your electronic  
8 appearance. It's a quick trip to the website, a couple of  
9 mouse clicks, it is the way that we note your official  
10 appearance today.

11                  We've got parties participating both in-person, as  
12 well as by GoToMeeting. Those of you who are in the  
13 courtroom, if you do rise to speak, please make sure you come  
14 to the lectern before you speak. It's the only place that you  
15 can both be seen and be heard.

16                  For those folks who are on GoToMeeting, I have  
17 activated the hand-raising feature. If you haven't already  
18 done so, and you know you're going to be speaking, give me a  
19 five star on your telephone, and you can of course do that at  
20 any time.

21                  Whether you are in person or by GoToMeeting, the  
22 first time that you speak if you would please state your name  
23 and who you represent. It really does help the court reporter  
24 in the event that a transcript is made.

25                  Finally, we are recording this afternoon using

1 CourtSpeak. We'll have the audio up on the docket shortly  
2 after the conclusion of the hearing.

3 And with that, Mr. Pomerantz, you want to give me an  
4 update?

5 MR. POMERANTZ: Good afternoon, Your Honor. Jeff  
6 Pomerantz, Pachulski Stang Ziehl & Jones, appearing on behalf  
7 of the Debtors and Debtors-in-Possession. Also in the virtual  
8 courtroom is my partners, Mike Warner and Ben Wallen, and also  
9 on the video is Michael Healy, Senior Managing Director of FTI  
10 Consulting, the Debtors' Chief Restructuring Officer.

11 Your Honor, it's a great disappointment, frustration  
12 and honestly anger that I appear before you today to announce  
13 that the Debtors are withdrawing its motion to sell  
14 substantially all of their assets and will be immediately  
15 ceasing all operations. It is also with great sadness (glitch  
16 in the audio) people who depend on these (glitch in the audio)  
17 for their livelihood.

18 This is not the announcement I wanted to make here  
19 today. Rather, I had hoped to announce that the lenders had  
20 agreed to support a sales transaction with Arco and Oak Street  
21 that would have preserved thousands of jobs, hundreds of small  
22 businesses and valuable landlord and vendor relationships and  
23 allowed the company to (glitch in the audio) as a going  
24 concern with a proven operator.

25 I'll not re-hash the results of the sale process

1       that I reported to the Court at the August 7th hearing.

2       Rather, I will point out that the Arco Oak Street transaction  
3       is and remains the highest and best result after a diligent,  
4       comprehensive, market-tested sale process that lasted several  
5       months. Even entities that sat back and watched the sale  
6       process unfold and conclude, who had a post-auction  
7       opportunity to re-engage after it saw the highest bid, did  
8       not. The sale process, Your Honor, worked as best as it could  
9       under the circumstances.

10               So what (glitch in the audio)? We are here because  
11       rather than accepting a going concern sale that maximized all  
12       recoveries of stakeholders, the lenders decided apparently to  
13       punish the Debtors, the thousands of employees involved in the  
14       Debtors' businesses, and all of its stakeholders by assuring  
15       that the Debtors would crash and burn in a complete and utter  
16       meltdown.

17               In retrospect, Your Honor, the writing was on the  
18       wall when the night before the auction that's when Richard  
19       Marshall, a senior credit officer at Bank of Hope and one of  
20       the lenders, told the Debtors' investment banker that he would  
21       rather see the Debtors burn in Chapter 7.

22               Now it appears that the sentiment was not an  
23       intemperate response in the heat of the moment by one of the  
24       lenders, as lenders' counsel ask Your Honor to believe. But  
25       rather a sentiment held by First Horizon Bank, Hancock Whitney

1 Bank, Cadence Bank, United Community Bank, Senova's Bank,  
2 South Street State Bank and Pinnacle Bank, the other lenders  
3 in the syndicate who are making the vindictive, inhumane and  
4 irresponsible decision to force an uncontrolled dismantling of  
5 these companies (glitch in the audio) to get a lower recovery  
6 in liquidation than they would receive in a sale.

7 These lenders, many of which are community banks,  
8 should explain to their shareholders and their communities why  
9 they are destroying thousands of families in every community  
10 that they serve. Rejecting a sale and forcing a liquidation  
11 will force families from their homes and wreak utter chaos and  
12 havoc for hard-working Americans. The lenders' irrational and  
13 illogical behavior will have profound human consequences.

14 Your Honor, FTI (glitch in the audio) and Pachulski  
15 Stang, along with the 2 independent directors were hired on  
16 the eve essentially of what was a freefall bankruptcy filing.  
17 Forced into Chapter 11 to protect their leases and without any  
18 financing to administer these cases, the Debtors'  
19 professionals and independent directors did everything  
20 possible they could to keep this company alive.

21 As restructuring professionals, our goal is to  
22 maximize value, preserve businesses as going concerns, and  
23 achieve consensus. Yes, these cases were extremely  
24 challenging without a doubt. And the Debtors face severe  
25 challenges heading into and throughout the course of these

1 cases. So while the professionals -- but as a professional we  
2 take Debtors as we find them. We do everything possible we  
3 can do to accomplish what quality restructuring professionals  
4 must, save businesses and preserve value.

5 And while the auction did not produce as much  
6 overall value as many of the parties -- many of the parties  
7 had hoped, it did produce a transaction that maximized the  
8 value of the Debtors' assets while at the same time preserving  
9 the lenders' right to litigate most the claims they so  
10 preciousy valued.

11 Unfortunately, Your Honor, the lenders did not  
12 approach these cases in the same way the Debtor did. As Your  
13 Honor commented at the August 7th hearing, "In retrospect this  
14 lender group had no business making this loan to the Debtors,  
15 and certainly had no business extending DIP financing to the  
16 Debtors." They stepped aside when Arco agreed to provide the  
17 DIP in the first week of the case.

18 So when the Debtors and the Committee sought to  
19 extend the sale process from 4 to 5 months, the lenders were  
20 offered a second lifeboat, the Debtors again procured an  
21 actionable DIP alternative, but the lenders (glitch in the  
22 audio) and insisted on funding the DIP. Rather than being a  
23 constructive part of the process, the lender groups fought  
24 with the Debtors at every turn to make this case as difficult  
25 as it could be.



1           They did not understand the Debtors' businesses,  
2           they continuously pushed the Debtors to the brink refusing to  
3           provide additional financing, and then only agreed to do so  
4           after the Debtors called their bluff. On multiple occasions  
5           they took actions that adversely and irreparably damaged the  
6           process, and finally in later stages of the case they  
7           sabotaged the sale process by making unrealistic demands.

8           Was the lenders' destructive actions during the  
9           cases the only cause the sale process turned out the way it  
10          did? No. But they exacerbated an already challenging process  
11          and contributed to the results.

12          These lenders simply could not get over the (glitch  
13          in the audio) Debtors or accept that they were the one that  
14          made the pre-petition loans for a business they had no  
15          understanding how it operated. And in the end they have  
16          refused to accept the results of the comprehensive market-  
17          tested process that they were informed of every step of the  
18          way, that brought to the Court the best possible transaction.

19          The callous decision to pull the plug on the process  
20          will have real consequences to the thousands of people who  
21          rely on their connection with Mountain Express.

22          Mr. Marshall and the rest of the lender group were  
23          to -- will get exactly what they wanted to before the auction.  
24          They will witness the Debtors burn.

25          So, Your Honor, we do not think the next step should

1 be Chapter 7. That conversion to Chapter 7 with no funding,  
2 facilities in 27 states and with all the potential legal and  
3 environmental liability that comes from the immediate chaotic  
4 cessation of operations of hundreds of gas stations would be a  
5 disaster. Rather, the lenders should file a motion for relief  
6 from stay to allow them to pursue whatever State Court  
7 remedies they have. They should not be able to use this Court  
8 to clean up the mess that they helped create and which is  
9 totally avoidable -- which was totally avoidable.

10 And I note -- I will discuss in a few moments, Your  
11 Honor, the Court can issue an order to show cause why these  
12 cases should not be dismissed to be heard next week. More  
13 importantly, all of the other constituents should be provided  
14 whatever opportunities available to them to allow them to  
15 salvage their business, especially the family operators of gas  
16 stations and the owners of related properties, and allow them  
17 go on unhindered in what will be an extremely confusing  
18 conclusion to these bankruptcy cases.

19 Your Honor, the Debtors (glitch in the audio) have  
20 their eye on what has been transpiring the last couple of  
21 weeks, the landlords who are not paid rent because the lenders  
22 shut off funding, the dealers who are desperately seeking fuel  
23 shipments if the Debtors lack of liquidity to buy sufficient  
24 fuel. And the employees who are wondering whether to come to  
25 work each day because of the lenders publicly distanced to the

1 sale process.

2 It's time for these parties to get some relief from  
3 this Court to mitigate the damage and chaos caused by the  
4 lenders' decision. That is why, Your Honor, today the Debtors  
5 are asking the following from Your Honor: First, approval of  
6 the Debtors' rejection of all of its real property leases,  
7 dealers' subleases, fuel supply agreements with dealers, other  
8 agreements relating to the provision of goods and services to  
9 specific sites, fuel supply agreements with the non-controlled  
10 locations, and fuel supply agreements with the oil company.  
11 Essentially all operating executory contract releases should  
12 be rejected today.

13 Second, specific authorization, notwithstanding  
14 anything in the contracts to the contrary, so each of the  
15 Debtors to go and immediately procure fuel from alternative  
16 soft sources to allow them to mitigate their damages.  
17 Essentially confirming that Section 326 does not hinder those  
18 parties from taking those actions to protect their rights.

19 Third, authorize the Debtors to waive the  
20 restrictions, all the confidentiality agreements with respect  
21 to bidders that prevented them from communicating with the  
22 Debtors' lenders, lessors, dealers and creditors without the  
23 Debtors' consent. While those provisions were critical during  
24 the sale process, now that the sale process had ended, it is  
25 only fair that any bidders be able to have those

1       communications to try to salvage something for all the people  
2       affected by today's decision.

3               And last, Your Honor, to issue an order to show  
4       cause why these cases should not be dismissed and set a  
5       hearing for such motions some time next week with the  
6       Debtors to lodge a proposed order the day before the hearing.

7               We also, Your Honor, would like to use existing cash  
8       on hand to pay accrued but unpaid sales taxes for inventory  
9       sold inside the stores which was incurred in July and August  
10      for which the Debtor has not yet received a bill. To total  
11      amount for such taxes is approximately \$857,000. These  
12      monies, Your Honor, are not the Debtors' property. These are  
13      sales and use taxes that Your Honor is -- and they be should  
14      immediately be turned over to the taxing authority.

15              Your Honor, we are going to terminate all of our  
16      employees effective tomorrow and seek confirmation and  
17      authority to pay all unpaid wages, benefits, taxes owed with  
18      respect to these employees and also to pay up to \$150,000 in  
19      paid time off plans according to company policy that these  
20      employees are entitled to receive upon termination.

21              Lastly, Your Honor, there are certain orders that  
22      are waiting Your Honor's signature, which we request that Your  
23      Honor enter, and they are, number 1, Whitman automatic stay  
24      modification stipulation which appears at Docket Number 1117;  
25      2, a certificate of counsel at Docket Number 1118 regarding

1 the application to retain Akerman as the Debtors' special  
2 environmental counsel, which is at Docket Number 752; and  
3 third, specifically we have no objection at Docket Number 1272  
4 regarding Pachulski Stang's first interim fee application,  
5 which is at Document 1090.

6 Your Honor has also set several motions for  
7 emergency hearings today, I think there are three or four. We  
8 will await Your Honor's ruling on where the case goes from  
9 here before addressing the motions. But suffice it to say  
10 that if Your Honor agrees with the Debtors' proposed course of  
11 action, we will be -- not be contesting the release of those  
12 motions.

13 Happy to answer any questions Your Honor has.

14 THE COURT: All right. Thank you. I'm sure there  
15 will be as we make the circle.

16 Mr. Elrod?

17 MR. ELROD: Good afternoon, Your Honor. John Elrod  
18 and Shari Heyen on behalf of First Horizon Bank as DIP agent.

19 Your Honor, I'm puzzled by the anger as expressed by  
20 Mr. Pomerantz as a result of the failed mediation. Based upon  
21 his comments today in the hearing it would seem that that  
22 makes a case per se for the appointment of a Chapter 11  
23 Trustee. His suggested path forward is about as value  
24 destructive as a Chapter 11 Debtor can suggest in a case of  
25 this nature.

1           As acknowledged by all parties involved, Your Honor,  
2           the Debtors' sale process failed despite the lenders extending  
3           over \$48 million in credit. Every time the Debtors made a  
4           funding request they ultimately got what they wanted. For  
5           Mr. Pomerantz to suggest somehow the lenders were acting in  
6           bad faith or wanted to see this case fail is absurd and  
7           without any evidentiary basis whatsoever.

8           Importantly, Your Honor, all the Debtors' major  
9           creditor constituents opposed the relief that Mr. Pomerantz  
10          has now suggested on the fly from the hearing. As the Court  
11          may have seen, the Debtor has now -- or the agent has now  
12          filed a motion to appoint a Chapter 11 Trustee or to convert  
13          these cases. There are potential alternative paths forward,  
14          Your Honor, which can be effectuated under a Chapter 11  
15          Trustee or a Chapter 7 Trustee.

16          For whatever reason these options now appear to have  
17          been appropriately vetted by the Debtors. We have been  
18          approached by a variety of proposed purchasers and operators  
19          who have been shut out of this process since day one or along  
20          the way. We are evaluating these options and believe that one  
21          or more of them can be accomplished through the appointment of  
22          a Chapter 11 Trustee. And we believe these options will  
23          result in a superior return to creditors than the path  
24          proposed by the Debtors, which is apparently the dismissal of  
25          these cases.

1           And the DIP agent is agreeable in the event a  
2 Chapter 11 Trustee is appointed to a limited appropriate and  
3 measured interim cash collateral usage that would enable the  
4 Chapter 11 Trustee to fund these cases until these options are  
5 run to ground.

6           We would ask the Court to defer ruling on any  
7 requests by Mr. Pomerantz today. There's no pleadings, we  
8 have no notice of this, and unfortunately, as is the case in  
9 much of the communications, or lack of thereof in these cases,  
10 we had no notice whatsoever of Mr. Pomerantz's planned request  
11 to the Court and heard it for the first time as Your Honor  
12 did.

13           The Debtor -- the agent obviously objects to any  
14 attempts by the Debtors to dismiss these cases. Dismissal  
15 should not be an option for several reasons. These Chapter 11  
16 cases are administratively insolvent, there's no question  
17 about it. Dismissal would potentially result in professionals  
18 of the Debtors receiving more than their fair share of post-  
19 petition payments relative to administrative expense claimants  
20 in Chapter 11.

21           The Debtors have yet to do the basic things that are  
22 required in Chapter 11 cases. They haven't filed a request  
23 for an administrative expense bar date, they haven't even  
24 filed a request for a 503(b)(9) bar date. So we don't even  
25 know what the Chapter 11 administrative expense population is.

1 The Debtors haven't even filed Monthly Operating Reports. The  
2 Debtors have conducted no investigation whatsoever of their  
3 pre-petition affairs. It would be inequitable, Your Honor,  
4 for these cases to be dismissed when these basic items have  
5 not been addressed by the Debtor and its professionals.

6 Your Honor, it's uncontested that millions of  
7 dollars were paid to to the Debtors' insiders within one year  
8 prior to the petition date. The Debtors have undertaken no  
9 substantive investigation of those transactions whatsoever.  
10 Certain of these transfers are detailed in the Statements of  
11 Financial Affairs at Docket 664, Pages 117 of 154. The first  
12 page of Attachment 4 of that document alone indicates that  
13 millions of dollars went out to insiders in the year prior to  
14 the petition date. That Statement of Financial Affairs was  
15 sworn to under penalty of perjury by Mr. Healy. The Debtors  
16 have done nothing to investigate those transactions.

17 When I, during the course of these cases, requested  
18 the Debtors undertake some investigation, or requested the  
19 lenders have the authority to undertake some type of  
20 investigation I was told by Mr. Pomerantz that would result in  
21 chilling of bidding, it would distract them from the sale  
22 process and otherwise result in an unfavorable result.

23 Your Honor, we of course sat by and let that occur.  
24 You know, we were respectful of the sale process. In fact, we  
25 respected everything about the sale process that the Debtors



1 requested until it became clear in New York that the auction  
2 process had utterly failed. So, Your Honor, dismissing these  
3 cases would result in a grievous harm to the creditors of  
4 these estates.

5 At least two witnesses have approached me, one a  
6 former employee and one a potential -- or one, a seller of  
7 assets, a pre-petition seller of assets to the Debtors, and  
8 have advised the Debtors' insiders enrich themselves pre-  
9 petition at every turn at the expense of the Debtors in an  
10 endemic fashion. We are aware of a stock redemption  
11 transaction to two former insiders of the Debtor in the amount  
12 of \$55 million that occurred in 2021. And as Your Honor is  
13 aware, simple dismissal of these cases would threaten those  
14 avoidance actions to recover these amounts.

15 The Debtor in its status report filed after the  
16 conclusion of the auction indicated that, oh, well, the DIP  
17 agent will have its rights under Georgia's Uniform Voidable  
18 Transfers Act. Well, Your Honor, I think that's a false offer  
19 in the sense that Sections 544 and 546 of the Bankruptcy Code,  
20 when coupled with the UVTa, enable a Trustee to go back  
21 further than the DIP agent be able to under its state law  
22 rights. Obviously we've been in bankruptcy now for five  
23 months and the time period, the time frame some of that has  
24 burned off. But perhaps that's Mr. Pomerantz's design.

25 Your Honor, no investigation of Oak Street, which

1 installed one of its employees as a board member of the  
2 Debtors prior to the petition date, has been conducted by the  
3 Debtors. Mr. Pomerantz spent the bulk of the time at the  
4 first day hearing in these cases attacking Oak Street. Since  
5 that time no investigation of Oak Street has been undertaken.  
6 In fact, at the auction Oak Street teamed up with the, if you  
7 want to call it, the successful bidder, the party that  
8 Mr. Pomerantz was proposing the Debtors sell the assets to  
9 and, you know, basically proposing a release of Oak Street so  
10 that there would be no investigation and no recovery of these  
11 estates.

12 Also a release of that director who served on the  
13 board, had a clear conflict of interest. I'm told by  
14 Mr. Pomerantz that he never recused himself from decisions  
15 that were made relating to Oak Street transactions.

16 Your Honor, no review of the sale lease back  
17 transaction with Oak Street or any other landlord to determine  
18 whether those leases were above market, whether they were  
19 disguised financings, or otherwise subject to attack were  
20 undertaken. And, Your Honor, just the basic review of kind of  
21 your garden variety trade preference claims. None of that has  
22 been done either. Likely not a big source of recovery, but it  
23 needs to be looked at.

24 To suggest that dismissal of these cases is the  
25 appropriate path forward is simply wrong, Your Honor, and we

1 would ask, as you have seen by now, I believe we have filed a  
2 motion for a Chapter 11 Trustee, we would ask that in light of  
3 Mr. Pomerantz's comments that that Chapter 11 Trustee be  
4 appointed immediately.

5 THE COURT: All right. Thank you.

6 MR. ELROD: Thank you, Your Honor.

7 THE COURT: Let me ask, do I have anybody on the  
8 line from Kirkland?

9 (No audible response.)

10 THE COURT: Any other counsel for Oak Street?

11 MR. POMERANTZ: I believe Ashley (glitch in the  
12 audio) line, Your Honor.

13 THE COURT: Mr. Pomerantz, I'm sorry, you just cut  
14 out on me, I didn't hear you.

15 MR. POMERANTZ: I'm looking (glitch in the audio)  
16 Ashley Surinak. She is from Kirkland for Oak Street.

17 THE COURT: All right. Thank you.

18 MS. SURINAK: Good afternoon, Your Honor. Can you  
19 hear me?

20 THE COURT: I can. I was just giving you a moment  
21 to get everything together. You didn't know that was coming.  
22 I didn't mean to be unfair.

23 You have a view about this in terms of next steps?

24 MS. SURINAK: Your Honor, I think, you know, the  
25 outcome of mediation last week we were generally supportive of

1 a go-forward transaction, obviously understanding that at some  
2 point something has to be done with our leases.

3 THE COURT: Okay.

4 MS. SURINAK: Generally speaking, I think our client  
5 is most concerned being able to get possession of the property  
6 to address the ongoing issues at the properties. But  
7 otherwise I think, you know, we all have been extremely  
8 supportive of the Debtors' efforts participating in the  
9 auction, attempting to maximize value, understanding that the  
10 DIP lenders are not supportive of that transaction.

11 THE COURT: Right.

12 MS. SURINAK: And I believe now the primary concern  
13 is to get into these properties to address the ongoing issues  
14 related to the properties and to otherwise support the process  
15 in the way that makes the most sense for all stakeholders.

16 THE COURT: Right. So I need to understand from  
17 your client, and if you need to step off and then get back on,  
18 I certainly understand that, but I need to understand from  
19 your client as to how they think the most efficient way to  
20 accomplish that is. Is it for, as Mr. Pomerantz suggested,  
21 that I effectively take the Debtor out of the middle of the  
22 relationship and let them negotiate directly with the  
23 operators, or something different or something that is staged.

24 And again, I'm not suggesting that I'm headed that  
25 direction, but I need to understand because they've got the

1 largest portfolio, they've got the biggest problem to deal  
2 with and I'm hoping they've given some thought. I can't  
3 imagine that they wouldn't have thought about a Plan B because  
4 everyone had to suspect that the mediation could fail.

5 So I would really like to understand their views  
6 about next step. And if you need to hop off the line, have a  
7 private conversation, then come back on. I'm going to guess  
8 this is probably going to take a while so I'm going to guess  
9 we'll probably be here.

10 MS. SURINAK: Yes, Your Honor. If you wouldn't  
11 mind, I'd like to confer with our client and we'll hop off.

12 THE COURT: Don't mind at all. So just pop back on  
13 when you're ready.

14 MS. SURINAK: Thank you very much.

15 THE COURT: All right. Thank you.

16 The US Trustee have a view about all of this?

17 MR. TRAVIS: Good afternoon, Your Honor. Ross  
18 Travis for the US Trustee.

19 I've not had an opportunity to discuss this -- these  
20 new revelations with my client, so at this time the US  
21 Trustee's taking no position on whether conversion or  
22 dismissal is appropriate. So we are ready to appoint a -- you  
23 know, start the process on appointing a Trustee if necessary.

24 THE COURT: So let me sort of -- this is  
25 complicated. The chances of me dismissing the case, given

1        what I've heard thus far, are slim to none. I'm not going to  
2        run from this problem, I'm not going to let loose of potential  
3        environmental issues. And I've got however many Debtors there  
4        are that have to come to a conclusion. And I'm simply not  
5        going to depend upon, you know, an unstated, well, we intend  
6        to dissolve, or we'll get to that eventually. I mean,  
7        there's -- you know, I know how to do that and it's called a  
8        Chapter 7 case.

9                I'm reluctant -- I'm going to have to really  
10       understand why a Chapter 11 would make sense. I mean, I've  
11       effectively had a Chapter 11, I had Mr. Healy in charge, and  
12       all a Chapter 11's going to do is just going to add another  
13       layer of overhead on top of a layer of overhead that the  
14       Debtor can't sustain anyway. I mean, I know how that works.  
15       I mean, a Chapter 11 Trustee's not going to run anything, a  
16       Chapter 11 Trustee's going to hire somebody to run it and then  
17       go hire all the professionals. Perhaps some of the ones that  
18       exist, and I would certainly understand that argument that you  
19       would keep everything in place for a while while you figured  
20       out what the issues are.

21               I also wouldn't put a Chapter 7 Trustee in the midst  
22       of having to go deal with all of this. But I might -- you  
23       know, I can see putting a Chapter 7 Trustee in place after I  
24       terminate leases and make sure the operations are shut down so  
25       the Chapter 7 Trustee's not having to go out and physically

1 inspect 800 stations. It becomes a litigation case. To the  
2 extent that there are litigation claims, I'm going to see that  
3 those litigation claims are pursued.

4 What I do not want to do is to put an under-funded  
5 or unfunded Chapter 7 Trustee in the position where he or she  
6 is having to incur expenses that they may be personally  
7 responsible for in order to do a job that may never have any  
8 money.

9 That was a long-winded way of talking to a whole lot  
10 of people who are listening, but also asking you, it would  
11 seem to me that if we go the Chapter 7 Trustee route, this  
12 would probably require a special appointment. I haven't had  
13 that experience with your current boss on that issue.  
14 Obviously some predecessors I have many times, but I just  
15 don't know the policy, I don't know how quickly it could be  
16 done, I don't know if there's -- you're going to get  
17 communications from everybody involved, if that's what I  
18 decide, and then go get it, I don't know how quickly it can be  
19 done if it's a special appointment.

20 Do you have any idea, answers to those questions?  
21 And I understand if the answer is no.

22 MR. TRAVIS: Honestly, Judge, I can't give you an  
23 exact answer to that question. I know we've had a couple of  
24 recent cases where the creditor body has, you know, attempted  
25 to vote in their own trustee.

1 THE COURT: Well, we can't wait -- we can't wait  
2 for that.

3 MR. TRAVIS: I know, and that's always taken three  
4 or four weeks.

5 THE COURT: Right. And so let me ask you, and  
6 again, I just don't know, and this is not complaint, I just  
7 don't know the current procedure that's employed by  
8 Mr. Epstein. It is -- is this decision made downstairs on the  
9 fourth floor, is it made in Austin or wherever Mr. Epstein is,  
10 or is there -- is it -- does it go somewhere else? In other  
11 words --

12 MR. TRAVIS: It's going --

13 THE COURT: -- if I tell you at 4:45 that I want a  
14 Chapter 7 Trustee by 5:00 o'clock, is that possible?

15 MR. TRAVIS: I don't think so. Mr. Epstein was  
16 actually in the building today and is on his way to the  
17 airport right now to go back to San Antonio.

18 THE COURT: Got it.

19 MR. TRAVIS: So I don't think I have any way to get  
20 in touch with him, and our AUST is in South Carolina at the  
21 moment.

22 THE COURT: Is it something that can be accomplished  
23 overnight, if that's --

24 MR. TRAVIS: I don't know about overnight, I could  
25 probably get something done by the end of tomorrow, maybe



1 Friday at the latest.

2 THE COURT: Got it. You do understand that once  
3 this stops this will be -- this will be like a looting  
4 scenario, you understand that. Right?

5 MR. TRAVIS: Yes, Your Honor, I do understand that.

6 THE COURT: So Friday is problematic. And there are  
7 landlords that are going to be stuck in a difficult position  
8 if we go down this path.

9 MR. TRAVIS: Could you give me five minutes and I  
10 will walk downstairs and see if Mr. Epstein happens to still  
11 be in the building?

12 THE COURT: Absolutely. Can you send him a text or  
13 email because I don't want you to miss what everyone else is  
14 going to say and I don't want to stop. Can you just text him  
15 or email him from here? Is it better if you go downstairs?

16 MR. TRAVIS: Actually my phone is downstairs, that's  
17 my personal cell phone over there.

18 (Laughter.)

19 THE COURT: Fair enough. So you're free to go, and  
20 if there's --

21 MR. TRAVIS: Okay. I will make it quick, Judge.

22 THE COURT: -- and if there's something that pops  
23 up then I'll try to write it down and regurgitate it to you.

24 All right. Mr. Gibbs? I'm actually sorry you have  
25 to be here, but you'll be the one I lean on the hardest.

1 MR. GIBBS: I understand, Your Honor. Chuck Gibbs  
2 with McDermott Will & Emery, counsel for the Unsecured  
3 Creditors Committee. We share I mean, all the parties'  
4 chagrin as to where we find ourselves.

5 THE COURT: Yeah, you know, it happens. Look, it  
6 doesn't always work.

7 MR. GIBBS: And I'm going to resist the temptation  
8 to respond not only not in kind, but just respond with any  
9 particular rejoinder to a lot of what I heard. I sat through  
10 an hour of that last week.

11 THE COURT: Yeah, it's not productive.

12 MR. GIBBS: It isn't. I can tell you that the  
13 Committee, all of whom are creditors who are owed a lot of  
14 money, including a lot of admin money, who continue to provide  
15 business services in some cases to the Debtor, support a  
16 couple of things that we want the Court to know.

17 Number 1, we support the lenders' decision not to  
18 accept the offer that was the mediator's final proposal.

19 THE COURT: Yeah, look, the mediation process didn't  
20 work. The one thing that I'm 110 percent confident of is that  
21 Isgur gave it everything he had. I'm just confident of that.  
22 So that's just okay.

23 MR. GIBBS: He absolutely did, and he may be the  
24 most frustrated that he wasn't able to get this successfully  
25 concluded. But I wanted the Court to know that with respect

1 to inferences as to the parties' good faith or efforts, we  
2 didn't find what we understood to be the mediator's final  
3 proposal to be one that should -- the banks should have  
4 accepted. And number 1, the offer that was evidenced in the  
5 letter of intent that preceded the commencement of the  
6 mediation was we thought a non-starter.

7 So the lenders' decision I don't think is borne out  
8 of any malice personally, just from our observation point.  
9 The lenders' decision was based on what they believe to be an  
10 unsatisfactory recovery on \$220 million of indebtedness,  
11 including almost 50 of which they loaned at the Debtor's  
12 request to the Debtor to fund these cases. And we have  
13 millions, if not tens of millions of unpaid administrative  
14 expenses is where we find ourselves today.

15 We had a Committee meeting today, and the Committee  
16 has voted to support the lenders' motion which was filed right  
17 before the hearing. And I heard the Court's reaction to it as  
18 to -- the skepticism as whether a Chapter 11 Trustee would  
19 solve anything. We don't go in -- we're not making that --  
20 we're not offering that support and are joining in that  
21 request with rose colored glasses on.

22 THE COURT: Sure.

23 MR. GIBBS: Representing my constituency it's borne  
24 in part of a hope that cooperatively with the lender there may  
25 be some recovery down the road that otherwise the lender would

1 have first recovery on in a Chapter 7, which would guarantee  
2 that my constituency gets nothing in this case. So there is  
3 some self-interest in my desire to join the lender.

4 But the conversations we've been having non-stop  
5 with the lender and throughout the mediation and throughout  
6 the sale process and subsequent to the termination of the  
7 mediation gives us, I think, and based on my experience, a  
8 significant basis to hope that we could put alternative buyers  
9 who were either shut out of the process or never contacted,  
10 maddeningly so from our standpoint, an opportunity to see if  
11 they can provide an operating solution that can save jobs,  
12 that can, in fact, not require a complete a shut down and  
13 liquidation of all the assets of the Debtor.

14 And a process that the lender can trust enough to  
15 let their cash collateral be used for a very short period of  
16 time to see if that result can be achieved. A Chapter 11  
17 Trustee, if it turns out the best efforts are unrewarded, can  
18 certainly become the Chapter 7 Trustee. I think that deciding  
19 to appoint a Chapter 7 Trustee, turn the lights off, fire the  
20 people, release all the landlords on an oral request is an  
21 impossible bell to un-ring so.

22 THE COURT: Sure. So let me -- can we take a step  
23 back a little bit? So, you know, one, as you well know, I can  
24 authorize a 7 Trustee to operate for a short period of time  
25 under the Code. And it seems to me that that's a much better

1 and cheaper way of proceeding forward than with an 11 Trustee.  
2 Unless you want to tell me, and this is no -- I have no basis  
3 to believe this, but I had an 11 Trustee, I've had Healy  
4 sitting there since the beginning of the case, and he  
5 understands that he answers to nobody but me. I mean, I  
6 understand -- you know, I understand how corporate formalities  
7 work, but he understands he answers to me. If there's a  
8 problem, he has an obligation to bring it to my attention.

9 But what's an 11 Trustee going to do other than just  
10 prolong the expense burn? And nobody's ever told me what the  
11 burn is per day, per week. I mean, does anybody know?

12 MR. GIBBS: Unfortunately we have no confidence in  
13 what that number is.

14 THE COURT: Right. And how do I deal with, you  
15 know, Mr. Singh and Ms. Tran's clients who, granted, and I  
16 haven't forgotten, they did something very wrong, and there's  
17 a day for that. But how do I deal with the fact that they  
18 can't -- you know, that they can't get what they contemplated  
19 when they signed that agreement? Why shouldn't I let them go  
20 buy gas from whoever it is that will sell it to them?

21 MR. GIBBS: I can tell you what my suggested  
22 solution for their dilemma is.

23 THE COURT: Sure.

24 MR. GIBBS: That the stay relief be granted  
25 immediately, but be granted for a temporal period. They're

1 free for the next two weeks, and then in the absence of  
2 reinstatement of the stay that they're completely released  
3 from the automatic stay. They can go get gas so that they can  
4 operate their business, but still preserve the ability to  
5 maintain that contractual relationship if and when the Debtor  
6 through a separate operator can, in fact, provide them with  
7 the fuel that they need to operate their businesses. So I  
8 think --

9 THE COURT: Yeah, a heck of cure calculation, isn't  
10 it?

11 MR. GIBBS: I'm sorry?

12 THE COURT: It's going to be a heck of a cure  
13 calculation, isn't it?

14 MR. GIBBS: There's a lot of cure calculations --

15 THE COURT: Yeah, no, I -- yeah.

16 MR. GIBBS: -- it would be difficult to come up  
17 with, so.

18 THE COURT: Have you conveyed that thought to  
19 Ms. Tran and Mr. Singh?

20 MR. GIBBS: I have not, Your Honor. We got their  
21 pleadings asking for emergency relief at the same time as we  
22 were having conversations to see what the path forward ought  
23 to be, but, you know, that's just the Committee's position.  
24 Mr. Elrod may be wanting to get my attention so he could do  
25 this, but --

1 THE COURT: No, look --

2 MR. GIBBS: -- that's just me thinking it through  
3 as a --

4 THE COURT: -- so I'm trying --

5 MR. GIBBS: -- long-time practitioner --

6 THE COURT: Sure.

7 MR. GIBBS: -- as to maybe how to skin that cat.

8 THE COURT: Yeah, and you've got a laundry list of  
9 things to talk about and think about. We're not going to  
10 leave here today without some solution that lets those folks  
11 have a chance at survival. Now if it's a two-week you can go  
12 buy fuel from anybody but we want to talk again in two weeks,  
13 you know, that may be the right balance. If it is a, you  
14 know, and I don't know what the evidentiary presentation would  
15 be, but if it is this is just so horrible that this can never  
16 be repaired, I hear that, too.

17 But we're not going to leave without a solution that  
18 lets their clients -- because they're the ones who stood up  
19 and asked, I mean, there have been a lot of me toos that have  
20 now been filed, and I've got Mr. Simon sitting over there, his  
21 situation's a little different. But there's going to be a  
22 solution that lets them buy gas. They have to have an  
23 opportunity to survive. I gave the Debtor a chance to  
24 survive, isn't going to work.

25 Although you think that you may see a path, and

1 again, I want to hear more about it, it bothers me that  
2 there's the assertion that there are viable purchasers that  
3 were excluded from the process. You know that I demand  
4 transparency. And I don't know what to do.

5 UNIDENTIFIED SPEAKER: (Indiscernible).

6 THE COURT: And so I will -- you know, I mean, I  
7 need to understand a little bit more about that.

8 But have you seen a proposed budget? I mean, I  
9 don't know what the current cash position is, I'm worried  
10 about sales taxes, I've got Mr. Melko's issue that's sitting  
11 out there. I mean, I've ignored him for two hearings, but  
12 eventually I'm going to have to deal with Mr. Melko because  
13 he's got -- he's got an issue, it's a real issue. I was, you  
14 know, I was just trying to wait to see whether it was going to  
15 be done in a meltdown or be done as part of a transaction.  
16 But I mean, there are all sorts of those issues that are out  
17 there.

18 MR. GIBBS: The only budget we've seen is the one  
19 that was attached to the order that you signed an hour to two  
20 ago that carries the Debtor through Friday, I believe it was.

21 THE COURT: Wasn't that last Friday or --

22 MR. GIBBS: It was proposed for the week ending this  
23 Friday, I believe.

24 THE COURT: Okay.

25 MR. GIBBS: And then they've been using it for that



1 budget on a 48-hour basis as we had these interim hearings.

2 THE COURT: All right.

3 MR. GIBBS: That's the only budget that we've seen  
4 from the Debtor that would show their cash needs, earlier  
5 versions of 13-week, but the situation has changed. But from  
6 a current budgeting standpoint the last we've seen, I believe  
7 is the one that carries them through Friday.

8 THE COURT: I mean, the past three or four weeks  
9 cash been going up or cash been going down?

10 MR. GIBBS: Unfortunately down.

11 THE COURT: And have administrative expenses been  
12 going up or been going down?

13 MR. GIBBS: I don't know. I think I know, but I  
14 haven't seen anything that confirms it.

15 THE COURT: I mean, that's the problem because the  
16 admin burn's going to go up in an 11.

17 MR. GIBBS: August rent hasn't been paid to my  
18 knowledge.

19 THE COURT: Right.

20 MR. GIBBS: So you have --

21 THE COURT: July rent wasn't paid.

22 MR. GIBBS: Well, a lot of rent wasn't paid --

23 THE COURT: Right.

24 MR. GIBBS: -- I'm not sure if all of it wasn't.

25 THE COURT: Okay.

1 MR. GIBBS: And people are continuing to work and  
2 accruing expenses, professionals.

3 THE COURT: Yeah, I haven't even -- I mean, I can't  
4 imagine what the hole is for the professionals. Right? You  
5 know, and so I don't know I'm going to react to all of that.  
6 I did read one of the applications and I had to put it down.  
7 But we'll deal with that when that comes up.

8 MR. GIBBS: And we've got post-petition taxes, and I  
9 heard Mr. Pomerantz ask for immediate authority to spend  
10 857,000, I believe to pay post-petition taxes, which are trust  
11 fund taxes, but --

12 THE COURT: Right.

13 MR. GIBBS: -- I believe there's a significant  
14 multiple of that of post-petition accrued unpaid taxes. So  
15 I'm not sure of the significance of those versus others that  
16 are owed, but it -- that number is part of the whole.

17 THE COURT: And so let me ask, in terms of your  
18 constituency, have you thought about what the exit it? I  
19 mean, I know -- what I mean, when I heard you say earlier was  
20 maybe there's some combination of sales and litigation  
21 recoveries that lets you negotiate out a piece or maybe  
22 there's a piece that's not covered by the lien. I don't know,  
23 I was just trying to speculate, versus, you know, is the right  
24 outcome for your constituents, your non-insider constituents,  
25 you know, understanding that there's no preference liability?

1 I mean, have we had all those discussions? I'm just  
2 trying to figure out --

3 MR. GIBBS: No, Your Honor.

4 THE COURT: -- where we're --

5 MR. GIBBS: I would love to be able to give you the  
6 comfort of saying we have a well-thought through articulated  
7 agreed upon Plan B. Not even --

8 THE COURT: You do not.

9 MR. GIBBS: -- close.

10 THE COURT: All right.

11 MR. GIBBS: Not even close. What we have is, I  
12 think I can say this without risk of losing credibility,  
13 people with credibility who have demonstrated a significant  
14 interest in coming in and providing an alternative way for  
15 these -- the vast majority of these locations to continue to  
16 operate, to get to a stabilized operational level that may  
17 yield the lenders a better recovery than what -- the offer  
18 that was rejected will give them.

19 THE COURT: Is this --

20 MR. GIBBS: Like there are causes of action which  
21 you've heard plenty of.

22 THE COURT: Sure.

23 MR. GIBBS: My read of the tea leaves in a  
24 Chapter 7, the lender has a lien on those, too, and they're  
25 not going to get made whole. So to the extent that there is

1       some negotiated, agreed upon sharing of cause of action  
2       recovery that's available through an 11, I think we stand  
3       behind them in the likelihood -- unless the damages are  
4       hundreds of millions of dollars -- of standing behind all of  
5       that money going to the lender in Chapter 7.

6               And I think that, you know, frankly for considering  
7       and operating a Chapter 7 Trustee, the expenses are not going  
8       to be significantly lower, I don't think, than a Chapter 11  
9       Trustee. They're going to have to have somebody to come in to  
10      figure out where the money is, who's it owed to, how do they  
11      get fuel, how do they deliver fuel.

12             THE COURT: There's not going to be any fuel, not  
13      going to be any leases.

14             MR. GIBBS: Well, if that's the operating premise  
15      and if that's the quick decision by a Chapter 11 Trustee, then  
16      again, you're, I think, at some level of stasis.

17             THE COURT: So is it your belief that you can't  
18      negotiate a deal and make it binding on a conversion to a 7?

19             MR. GIBBS: Never going to admit that I can't.

20             (Laughter.)

21             THE COURT: Okay. I know.

22             MR. GIBBS: I think that --

23             THE COURT: I'm just trying to -- I'm just trying to  
24      understand --

25             MR. GIBBS: Yeah.

1 THE COURT: -- the push back because I really don't  
2 see it. I mean, I'm -- look, I'm not -- I have not starry  
3 eyes about what happens in a 7. I also have no starry eyes  
4 about where we are right now. And the one thing that I am  
5 confident of is that nobody has yet perhaps even figured but  
6 certainly not told me how big the hole is, and, you know,  
7 it's -- the more I sort of read through and try to read  
8 between the lines, it's a huge hole. It's a hole I don't know  
9 how it gets filled.

10 But I got it. That's -- I was going to ask you to  
11 be -- I'm going to ask you to do more good work for everybody  
12 with probably little chance of being paid in a couple of  
13 minutes. But let me hear from the US Trustee.

14 MR. GIBBS: Thank you, Judge.

15 THE COURT: Thank you.

16 MR. TRAVIS: I do apologize, Your Honor --

17 THE COURT: No, no.

18 MR. TRAVIS: -- I'm slightly out of breath from  
19 running up the stairs.

20 THE COURT: Ah. So that's impressive.

21 MR. TRAVIS: Ross Travis for the US Trustee again.

22 I was able to get hopefully a satisfactory answer  
23 for the Court.

24 THE COURT: Okay.

25 MR. TRAVIS: We can have a panel trustee appointed

1 by tomorrow morning. If we were going to go off panel,  
2 there's going to be a lot of other issues. We have bonding  
3 requirements before we can appoint a trustee, we have --

4 THE COURT: Right.

5 MR. TRAVIS: -- background check requirements  
6 before we can appoint a trustee. The only other option is to  
7 appoint a panel trustee and then have the creditor body vote  
8 in a non-panel trustee a couple of weeks down the road.

9 THE COURT: Yeah, which is -- it's over.

10 MR. TRAVIS: It's over at that point, right. It  
11 looks like the best option may be to see if the DIP lender  
12 would be agreeable to a carve out and provide the Chapter 7  
13 Trustee with a budget. But we could get you a panel trustee  
14 appointed by tomorrow.

15 THE COURT: And again, I fully understand the US  
16 Trustee has the absolute right to appoint every trustee. All  
17 I have the right to say is no. But do we have any idea,  
18 because this is not going to be something, and again, no  
19 disrespect intended, but this is going to be something that a  
20 number of the panel trustees are just not going to be equipped  
21 both back office-wise and just financially not going to be  
22 able to withstand. I mean, do we have any idea of who it  
23 would be, or is that -- that's --

24 MR. TRAVIS: I mean, the general process is it's up  
25 on a rotation. We could definitely reach out to the trustees

1 and explain the situation and look for whichever one has the  
2 most expertise and availability.

3 THE COURT: Got it. Okay. Let me continue talking  
4 to people. Thank you.

5 Mr. Simon?

6 MR. MAYER: Good afternoon, Your Honor.

7 THE COURT: Good afternoon.

8 MR. MAYER: Simon Mayer from Locke Lord. With me is  
9 Philip Eisenberg and on the line is Mr. Rick Kuebel.

10 THE COURT: All right. Good afternoon, gentlemen.

11 UNIDENTIFIED SPEAKER: Good afternoon.

12 THE COURT: Your view on this.

13 MR. MAYER: Well, Your Honor --

14 THE COURT: And I've read your motion again.

15 MR. MAYER: Thank you.

16 THE COURT: Where are you on all of this, given what  
17 you've heard today? Because you're the focal point of this, I  
18 mean, in general. I mean, I say you generically, I mean, it's  
19 the ultimate property owners that really -- it's time for you  
20 to weigh in. It's time for you to weigh in heavy. This is --  
21 whatever we do is really going to affect the value of your  
22 assets. And I mean, I really do want to understand what  
23 you're thinking. It's time to -- it's time to put the  
24 strategy aside, or maybe it's time to strategize me, I mean, I  
25 don't know, but I really need to hear -- that's why I asked

1 the Kirkland lawyer to go talk to the client, I really do want  
2 to hear where you folks are.

3 MR. MAYER: Your Honor, I think to be fair  
4 Mr. Kuebel is probably the man that's the closest to the  
5 client and we're --

6 THE COURT: Well, let me ask this, I mean, did -- I  
7 believe it only fair that I give you the same opportunity that  
8 I gave the young lawyer from Kirkland. If you all want a  
9 couple of minutes to go huddle with the client, given  
10 everything that has been said, so that you can convey it, I'm  
11 more than happy to do that. Mr. Kuebel sometimes doesn't need  
12 that because he's always two steps ahead of us.

13 Mr. Kuebel, would you -- would you like -- first of  
14 all, you'd like for me to un-mute your phone line. Okay.  
15 Mr. Kuebel, would you like -- would you like the opportunity  
16 to, given everything that you heard, to go have a conversation  
17 with your client? Because I -- I mean, I'm telling you how I  
18 generally feel. It's time for you folks to really speak up  
19 because you're the value that's next to a road.

20 MR. KUEBEL: Yeah, Your Honor, believe me, this has  
21 been almost late-night exercises with our client as well, and  
22 unfortunately yesterday -- and I have sent some emails over to  
23 Oak Street -- one of the local news stores ran a very  
24 unflattering story about one of the MEX locations in New  
25 Orleans on Jefferson Highway that happened to be abandoned,



1       looted, windows knocked out. Mr. Mayer's got some pictures  
2       and a link to the article if the Court wants to see it.

3               But this has been a late-night set of calls and an  
4       early morning set of calls today with our client to discuss  
5       where they are. I mean, particularly with the clients that we  
6       moved for with respect to the -- with respect to the leases  
7       that are unpaid. And we've got a group of six in the New  
8       Orleans area, Your Honor. Rents weren't paid for July or  
9       August.

10              Our clients are ready to move forward. I think they  
11       would be willing to work through a stepped lease termination,  
12       for example a dynamic where the leases would terminate at the  
13       end of the month unless there's maybe some -- excuse me, Your  
14       Honor -- unless there may be a dynamic where a trustee would  
15       want to save those leases and get them current or work an  
16       alternative arrangement with the landlords.

17              But what's really I think grating on our clients is  
18       the instant security to the side. I mean, it's the point  
19       where it's no longer -- it's no longer like (glitch in the  
20       audio) necessary the rent, but it's out of the trap of the  
21       stores being vacant, unoccupied. And we'd certainly like to  
22       get some relief from the Court, even if we do an interim or  
23       stepped type of lease termination to where we've got locations  
24       that right now are unmanned or closed, we could step in to  
25       secure them.

1           THE COURT: To me that doesn't -- that shouldn't  
2 even be a conversation item, that ought to be a given. But  
3 I -- so I started all this, and if you're perfect -- if you  
4 can answer the question, I'm perfectly happy to hear it, you  
5 know, what I'm looking at is, you know, as I've said before,  
6 again, without -- without a lot more structure, which I  
7 haven't heard, no way I'm going to dismiss the case. And so  
8 it becomes something else.

9           And again, not -- you know, I've said what I've said  
10 and I've tried to give you my honest reaction to what's on  
11 file, and my own, you know, 30-plus years of I lived in that  
12 world, you know, I always got thrown the stuff in the gutter.  
13 I wasn't the one throwing it, I was the one that had to deal  
14 with it once it got thrown. I know what this is going to be  
15 like. And so, again, I want everybody's honest opinions. You  
16 know, if it is a, we simply would like the Debtor out of the  
17 way because we want to go negotiate with the sub-tenants, you  
18 know, terrific, I want to know that. If it is a, we just want  
19 to get away from this and start over, I want to know that,  
20 too.           But, so, Mr. Kuebel, totally up to you. People  
21 are stepping out in the hallway, which they're welcome to do.  
22 Do you want to -- I can -- Mr. Mayer knows where the  
23 conference rooms are, do you guys want to get on a phone call  
24 really quick and come back?

25           MR. KUEBEL: It's funny, Your Honor, I have the

1 clients ringing me off the hook. But -- and I do want to talk  
2 to them. One thing, I didn't answer Your Honor about the  
3 dismissal question or the dismissal issue. I don't think our  
4 clients will want to see this case dismissed and have to go  
5 all over various parishes in Louisiana to seek relief.

6 Also, I think the issue that the bank's counsel  
7 raised about -- and the Committee counsel, about the integrity  
8 of the Chapter 5 causes of actions staying here is very, very  
9 important. So --

10 THE COURT: No, I got it.

11 MR. KUEBEL: -- we would definitely --

12 THE COURT: Totally got it.

13 MR. KUEBEL: -- (glitch in the audio) dismissal but  
14 we certainly also want -- I think we will say for a dynamic  
15 where at least with respect to the landlords, the landlords  
16 would have the availability to immediately secure stores that  
17 are not currently operating and be on a very short lease  
18 horizon to get those stores back the end of month unless we  
19 can come up with some alternative arrangement.

20 THE COURT: Yeah, don't know what the timing is, but  
21 again, if there are vacant stores, that's a threat, that's a  
22 threat not only to your value, it's also a threat to the  
23 surrounding community. And that we're going to fix today. No  
24 issue.

25 MR. KUEBEL: Thank you, Your Honor.

1 THE COURT: All right. So if you would like to --  
2 you know the combination across the hall. Right?

3 MR. MAYER: I think so.

4 THE COURT: All right. If it turns out that  
5 somebody's in there, come back, Ms. Portillo will take my key  
6 and unlock the door next door, or it may already be unlocked,  
7 I don't know. But, you know, the one next door is mine. It's  
8 next door to the attorney lounge. So when you guys are ready,  
9 just come on back in. Okay?

10 MR. MAYER: Thank you.

11 THE COURT: All right. Thank you.

12 Ms. Surinak, you should be -- have you -- you may  
13 have needed to hit five star again.

14 (Pause in the proceedings.)

15 THE COURT: So haven't seen you. Could you say  
16 something, because I thought I heard you actually hit the  
17 keys.

18 MS. SURINAK: Can you hear me, Your Honor?

19 THE COURT: Oh, yes, you're live. Sorry. Yes.

20 MS. SURINAK: For the Record, and I apologize, I  
21 didn't say my name for the first name. Ashley Surinak of  
22 Kirkland & Ellis on behalf of (indiscernible) Real Estate  
23 Capital. Thank you for providing us the time to confer with  
24 our client, and hopefully we have an answer that is sufficient  
25 for Your Honor.

1 First and foremost we would just like to reiterate,  
2 understanding that it's not the path forward at the time, so  
3 we believe the proposed sale transaction was the best possible  
4 outcome to maximize value in these Chapter 11 cases.

5 THE COURT: Right.

6 MS. SURINAK: But having said that, and kind of  
7 reiterating our previous position, our second preference is  
8 really for whichever option allows for a quick orderly  
9 transition of our properties back to allow -- so that we can  
10 bring in new operators for locations that aren't currently  
11 operating so we can save jobs at those locations. And really  
12 the most important thing to us is that they are safe and  
13 operational. And they're kind of just stuck in their current  
14 (glitch in the audio) the process --

15 THE COURT: Right.

16 MS. SURINAK: -- and I think that if we could come  
17 to some kind of resolution, understanding Your Honor's  
18 comments and concerns about a dismissal of these Chapter 11  
19 cases, but whether that's working with a Chapter 7 or a  
20 Chapter 11 Trustee to get the properties returned to us so  
21 that we can move in with new operators and, you know, restore  
22 the properties to proper working condition so that they're  
23 safe not only to those that go to the properties but those in  
24 the communities where they are. I think that would be our  
25 client's preference. And generally speaking (glitch in the

1 audio) ready today and able to move as quickly as, you know,  
2 the process allows to go in and do so.

3 THE COURT: So let me parse that just a little bit  
4 if I could. So stores that are vacant, that's easy. You  
5 know, we're not going to have vacant stores protected by the  
6 stay. And again, it may need to be some stepped procedure, I  
7 mean, I haven't gotten that far down the path yet, I mean,  
8 Mr. Elrod hasn't started trying to convince me that there's  
9 really a business that can be saved here. And I'm certainly  
10 going to hear that, but issues regarding vacant stores one way  
11 or another not going to be an issue.

12 What I am concerned about is to the extent that  
13 there are subtenants that are operating the stores, I want  
14 there to be a process where those folks have a genuine  
15 opportunity, number one, to continue their business while they  
16 have a discussion directly with you that, you know -- and  
17 again, I'm not saying that you have take anybody or that you  
18 could exclude everyone, everyone should stand on their own  
19 merits. If they're a good operator, I would assume your folks  
20 would want them in. If they're not a good operator, then, you  
21 know, you should be able to make that decision, too.

22 It's more of a if I take the Debtor out of the  
23 middle of it, which means I would step out of it and I would  
24 have no authority over it, I would want to make sure that  
25 there's a process that would allow for existing operators to

1 have an opportunity to be evaluated by your client, to be able  
2 to discuss a direct relationship with your client. And if it  
3 turned out that the relationship wasn't going to work, there  
4 needs to be -- it's not a you're out tonight. That's just not  
5 fair. Does that make sense?

6 MS. SURINAK: Yes, Your Honor. And (glitch in the  
7 audio) is definitely amenable to that and is willing to have  
8 those conversations --

9 THE COURT: Yeah.

10 MS. SURINAK: -- and is also willing, you know, if  
11 there is funding as the cases continue, if the banks continue  
12 to fund for a short period of time, if there are other buyers,  
13 I believe that our client is also amenable to speaking to, you  
14 know, whichever third parties are interested, provided that  
15 rents are paid in that scenario, so.

16 But generally speaking, understood, in terms of  
17 giving subtenants a chance to engage and our client would be  
18 willing to participate in that.

19 THE COURT: So let me -- have you talked directly to  
20 Mr. Elrod or Ms. Heyen?

21 MS. SURINAK: We have briefly, not specifically on  
22 this topic.

23 THE COURT: So let me suggest this because I just  
24 saw -- not that -- Ms. Surinak, you are more than perfectly  
25 capable. I saw Mr. Serajeddini just pop on. Given what was

1 just said and given everything that you've heard, do you want  
2 to go have a quick conversation with them?

3 MR. ELROD: Certainly, Your Honor. And we did have  
4 our first substantive conversation with them earlier today.

5 We do think there is an arrangement that is  
6 possible --

7 THE COURT: Right.

8 MR. ELROD: -- and we do think that there's a value-  
9 maximizing opportunity between the parties, you know, with  
10 certain protections and guardrails in place that would enable  
11 both parties to benefit.

12 THE COURT: I want to hear that. And I don't expect  
13 you to have every T crossed or I dotted, but I would be  
14 interested in hearing that.

15 I do want -- there has to be something in place to  
16 deal with vacant stores all the way around, but that's just  
17 not -- I -- quite frankly, I didn't realize that it was as  
18 many as perhaps it is. But we need to remedy that.

19 And even it is, as Mr. Kuebel suggested, and maybe  
20 -- you know, maybe, you know, Ms. Heyen ought to go jump on  
21 the call with Mr. Kuebel. If there's, you know, some process  
22 that says, hey, we want to get in, and there's -- you know,  
23 there's -- I'm making this up -- you know, there's 28 days to  
24 find a buyer and, you know, we're going to make sure that rent  
25 gets paid and electricity stays on and the coolers are on --



1       that's the part that scares me because I've cleaned those out  
2       before --

3               MR. ELROD: As have I.

4               THE COURT: -- and I've watched them been cleaned  
5       out. I've cleaned them out.

6               MR. ELROD: I have cleaned them out, too.

7               THE COURT: Yeah, and so --

8               MR. ELROD: In Jacksonville, Florida in the 1990s.  
9       Not pleasant.

10              THE COURT: Yeah. So, again, I -- those things will  
11       matter. And it also helps preserve value.

12              I also think that, perhaps -- and maybe while you  
13       all are doing this -- and I'm going to give you as much time  
14       as we need. It would seem to me that Mr. Gibbs' comments  
15       about what I'm just going to call the Tran Singh situation, is  
16       an awfully good -- I don't know why I didn't think of that. I  
17       mean, I guess that's why you keep the old guys around, right?  
18       They come up with good ideas.

19              (Laughter)

20              THE COURT: About coming up with something temporary  
21       that says, you know, hey, go buy fuel because we're not -- you  
22       know, if anything, it's mitigation. And then -- you know, and  
23       then come back once you've vetted through these other issues.

24              Let me ask. Mr. Healy, do you know how much cash is  
25       on hand, or Mr. Elrod?

1 MR. ELROD: I don't have the exact numbers, Your  
2 Honor. I think that the budget the Court approved earlier  
3 today would have the most current number, to my knowledge, but  
4 Mr. Healy likely has better detail.

5 THE COURT: Mr. Healy, can you tell me current cash  
6 on hand today and then all of the pluses and minuses from  
7 that?

8 MR. HEALY: Yeah. So (glitch in the audio), Your  
9 Honor, is roughly, you know, maybe the high threes. I mean,  
10 the number moves around during the day as we get auto-drafted  
11 by oil companies. But roughly \$4 million, a tad below that  
12 is, is a fair number.

13 THE COURT: Okay. And that would -- and no major  
14 pluses or minuses that you're aware of that are in -- that are  
15 floating out there in transit?

16 MR. HEALY: So, as of -- you know, for the balance  
17 of today, no.

18 THE COURT: Okay.

19 MR. HEALY: But every morning, obviously, we get  
20 drafted for fuel for prior day's transactions.

21 THE COURT: Okay. To me, that's helpful because it  
22 helps put some of the other things in perspective. Okay.

23 Thank you, Mr. Healy. Don't go far.

24 Let me ask: Do you want to -- do you want to step  
25 out and have that conversation? Do you -- it just seems to me

1       that you should.

2               MR. ELROD: I think so, Your Honor. This is --  
3       maybe the parties are talking past each other. But this is  
4       the first time we're really hearing that they might be  
5       interested --

6               THE COURT: That's why we're --

7               MR. ELROD: -- in alternative purchasers.

8               THE COURT: That's why --

9               MR. ELROD: So --

10              THE COURT: -- we're doing do this. That's why  
11       we're doing this.

12              MR. ELROD: Thank you, Your Honor.

13              THE COURT: Thank you.

14              And Mr. Pomerantz, I haven't ignored you. I just  
15       also think that this is one of those that probably is best  
16       handled by me.

17              MR. POMERANTZ: That is fine, Your Honor.

18              I did want to just -- and I'm not going to comment  
19       on a lot of what I heard.

20              THE COURT: Uh-huh.

21              MR. POMERANTZ: (Glitch in the audio) particularly  
22       troubling are the comments from Mr. Elrod and Mr. Gibbs that  
23       people were shut out of property.

24              THE COURT: Yeah, so we'll --

25              MR. POMERANTZ: From the (indiscernible) --

1 THE COURT: We'll work through today. What I'm  
2 worried about today is I'm worried about people working that  
3 can't get paid, I'm worried about people having jobs, I'm  
4 worried about storefronts that aren't secure, I'm worried  
5 about tanks that leak stuff that we don't want in our water  
6 supply. That's what I'm focused on today.

7 There will be another day for the rest of it. But I  
8 got it, I heard it all.

9 Ms. Williamson --

10 MR. POMERANTZ: Thank you.

11 THE COURT: -- I saw you pop on and you weren't  
12 smiling at me, so I'm worried that there's an issue.

13 Good afternoon.

14 MS. WILLIAMSON: Well, Your Honor -- thank you.  
15 Deborah Williamson representing Valero Marketing and Supply  
16 Company.

17 Your Honor, just two points I want to bring to the  
18 Court's attention:

19 One, Valero sells primarily branded fuel. We are  
20 willing and, in fact, we would encourage that the -- in fact,  
21 58 -- we have a number of locations -- that we would have the  
22 ability to connect other distributors of Valero-branded fuel  
23 to the current companies that sell Valero-branded, so they  
24 don't have the risk of going dry, which they just -- they have  
25 last week.

1 THE COURT: Right.

2 MS. WILLIAMSON: So part of this would be can they  
3 do that.

4 The other issue that we're facing, Your Honor, is  
5 that, for the fuel supply agreements that Valero, and I think  
6 probably others have with the Debtors, it's not just rejection  
7 because that doesn't work -- result in termination of those  
8 agreements. Under the PMPA, we would have to still give  
9 notice before we could terminate those agreements and reach  
10 agreements with other distributors.

11 So we would ask the Court, if the Court is going to  
12 permit the Debtor to reject, that you would also include  
13 termination language in there. And these are usually two-  
14 party agreements between, in my case, Valero and one of the  
15 Debtors.

16 THE COURT: Got it. So, one, thank you for the  
17 education because I -- you know, I don't know the effects of  
18 everything that I'm talking about. But we are going to figure  
19 out a solution to this.

20 And I assume, Ms. Heyen, you heard all of that?

21 MS. HEYEN: Yes, Your Honor, I heard.

22 THE COURT: All right.

23 MS. HEYEN: (Indiscernible).

24 THE COURT: So she's on top of it. And you know how  
25 to talk to Ms. Williamson. She's not going anywhere. If

1       there are issues that pop up out in the hallway that then  
2       there needs to be confirmation, you know how to reach her --

3               MS. HEYEN: Certainly.

4               THE COURT: -- and you guys can work through that.  
5       Okay.

6               MS. HEYEN: Absolutely. Thank you.

7               THE COURT: All right. Got it.

8               MS. WILLIAMSON: Thank you, Your Honor.

9               THE COURT: Thank you.

10              Mr. Ralston, I saw you pop on. Hold on, let me --  
11       there we go.

12              MR. RALSTON: Hello, Your Honor. Good afternoon.

13              THE COURT: Good afternoon.

14              MR. RALSTON: And Your Honor, this has been an  
15       education over the last week and a half. I was just brought  
16       into this case four weeks ago.

17              I represent an outfit called -- and it's -- by the  
18       way, for the Record, Mark Ralston, Fishman Jackson on behalf  
19       of MEX 1123 Lane.

20              So my client owns one store that's been going under  
21       renovations, located in Ohio, hasn't been opened yet. We are  
22       the landlord, the Debtor is a tenant, and there is a subtenant  
23       in place. We were paid rent, I think through July, haven't  
24       been paid in August, we don't expect to have been August or in  
25       the future.

1           One of the things -- and there's a lot going on.  
2           And my client is an investor. He is not someone who is super  
3           sophisticated as far as this industry, and I can't claim to  
4           have to have experience -- much experience, either, except for  
5           what I've gained in this case.

6           One of the things that Mr. Pomerantz indicated in  
7           his opening statement that was, I think, of significant  
8           interest to us, is that we were -- we would like to be able to  
9           talk separately and freely with, I guess, GPM. And we also  
10          would like to know who the other parties that were -- that  
11          submitted -- albeit not qualified bids, but submitted bids.  
12          We'd like to be able to talk to other folks.

13          And I think Mr. Pomerantz indicated that he would  
14          ask for a -- that the Debtors would be agreeable to a waiver  
15          of a privilege that prevents us from knowing and talking with  
16          other potential new tenants, as it were. And I think that's  
17          something that I -- you know, while we haven't made a firm  
18          decision as to whether we want our lease rejected right now or  
19          that we'd prefer to wait for two weeks to see if a trustee can  
20          resurrect a deal with GPM or another potential party, we would  
21          at least like the ability to start seeing if others are  
22          interested in our location.

23          THE COURT: I think that that's an incredibly  
24          reasonable ask. And I think, as Mr. Pomerantz put it, the  
25          need for that secrecy no longer exists. I want to get

1 everybody back in here to hear arguments before I make any  
2 rulings. But it's a very reasonable, thoughtful ask. And you  
3 know, everyone needs a plan B. I mean, I generally have a  
4 plan B and a plan C. And you need to be working on your B. I  
5 got it. So don't let me forget that.

6 MR. RALSTON: Yes, Your Honor.

7 THE COURT: All right. Thank you.

8 MR. RALSTON: Thank you.

9 THE COURT: I've got so many parties out in the hall  
10 that I'm not going to do anything until I get everybody back.

11 Yes, sir. You just hanging out?

12 UNIDENTIFIED-RT: I was just going to provide the  
13 Court with an update on where we stand, but --

14 THE COURT: That would be great.

15 UNIDENTIFIED-RT: So I have attempted to get in  
16 contact with Janet Northrup.

17 THE COURT: Okay.

18 UNIDENTIFIED-RT: It seems like the U.S. Trustee,  
19 the lenders, and the UCC would all be agreeable to her serving  
20 as a Chapter 11 Trustee.

21 THE COURT: Okay. And --

22 UNIDENTIFIED-RT: I don't see anything that would  
23 disqualify her, I'm not, you know, aware of any conflicts that  
24 she has.

25 THE COURT: She's bonded and she's --



1 UNIDENTIFIED-RT: She's bonded fully.

2 THE COURT: -- she's served in my --

3 UNIDENTIFIED-RT: Vetted through the --

4 THE COURT: -- utility case and did -- from at least  
5 what all the creditors said, did a great job.

6 Okay. Thank you for that update.

7 All right. Mr. Kuebel, the rest of your team has  
8 wandered back in. And I don't know -- let me see if there's  
9 any update that you need.

10 I think that there was an expression by Oak Street  
11 that there was perhaps some desire, on a limited basis, to  
12 work with the lender group. They have the same concern as you  
13 do about vacant locations. They are out in the hall talking.  
14 And we got the update from the U.S. Trustee that, at least  
15 preliminary, no commitments, but that there was an interest,  
16 regardless of whether we went the 7 or 11 route, that Janet  
17 Northrup would be an acceptable trustee.

18 And just given my experience with her, she's  
19 certainly done a good job in some of the cases I've had. And  
20 again, so full disclosure, you know, 12 years ago, I used to  
21 represent her, so I know she's been educated by the best  
22 lawyers.

23 (Laughter)

24 THE COURT: So that's -- Mr. Simon?

25 MR. SIMON: Yes, Judge. So the transaction that our

1 client had with Mountain Express, we had sold roughly 40  
2 stores to Mountain Express; four or five of these, which are  
3 the subject of our motion for relief from the stay, we are the  
4 landlord on. There were seven or eight others that there are  
5 third-party lessors -- or lessees in. And then the remainder  
6 of the -- are the -- are currently under Oak Street. I think  
7 Oak Street has about 26 of those stores, 28 of those stores.

8 THE COURT: Okay, got it.

9 MR. SIMON: So what we would do is -- first of all,  
10 we had license agreement, the Brothers Marx (phonetic), we  
11 were one of the --

12 THE COURT: So like the pizza and the sandwiches and  
13 stuff?

14 MR. SIMON: Fried chicken, I believe, Your Honor.

15 THE COURT: Oh, fried chicken. Okay. Sorry.

16 MR. SIMON: We would want that license back.

17 We would also want to terminate the leases for --  
18 where we're the landlord and for those seven or eight third-  
19 party lessees, and we would step in and work with them on an  
20 arrangement to continue operating those or assisting them in  
21 operating those stores.

22 THE COURT: Okay. So let me take -- let me take a  
23 step back for just a second.

24 MR. SIMON: Sure, Your Honor.

25 THE COURT: That's a bit aggressive for today.

1 MR. SIMON: Yes, Your Honor.

2 THE COURT: It may not be -- it may be on the table  
3 tomorrow. It's -- but I think -- you know, I -- you can't --  
4 the problem is you can't sit here and negotiate with me,  
5 right? That's the problem, right?

6 MR. SIMON: Correct.

7 THE COURT: And so the real issue is: How do we go  
8 forward? And you know, this all started with the lender's  
9 request for a Chapter 11 Trustee. You know I don't think  
10 that's a great idea. But if they're going to fund it and if  
11 I've got somebody whose capability I know that can immediately  
12 convert to a Chapter 7 role and it's going to be adequately  
13 funded, you know, I'll start -- or I'm at least going to think  
14 about it; or, if it's a 7 with limited ability to operate,  
15 which I actually think is better, but Mr. Gibbs is going to  
16 work really hard to try and convince me that I'm wrong and I  
17 got all of that. That's kind of where we are.

18 Do you have thoughts about that issue before we  
19 start talking about a structure? Because the moment you step  
20 up and say I have these five asks, then I'm going to get --  
21 everybody else is going to pop on and say, well, I want this,  
22 this, and this. And I'm just not the right guy to do that.  
23 I'm the guy who says, yes, that makes sense, it complies with  
24 the Code, that's okay. But I'm not the one you negotiate  
25 with.

1 MR. SIMON: As far as an 11 versus a 7 Trustee, Your  
2 Honor, I --

3 THE COURT: Or just --

4 MR. SIMON: I've represented the 7 Trustees and 11  
5 Trustees, but I know 11 Trustees are going to cost a lot more.  
6 I've worked with Janet Northrup.

7 THE COURT: Right.

8 MR. SIMON: I think she's a capable trustee, she's  
9 at a good firm. So, I mean, --

10 THE COURT: If she's the trustee, you're telling me  
11 you don't really care if the bank is funding it. Is that --  
12 for a short period of time.

13 MR. SIMON: For a short period of time, I think --

14 THE COURT: And your hearing --

15 MR. SIMON: I --

16 THE COURT: Your motion got set for a hearing. I  
17 mean, so I'm not going to -- I mean, I'm not going to let that  
18 sit for long.

19 MR. SIMON: Yes, Your Honor.

20 THE COURT: I just want someone to come in -- I  
21 don't have a good handle on any of this and I'm really  
22 uncomfortable. And I'm really uncomfortable about picking up  
23 the paper tomorrow and finding out that I've got storefronts  
24 that have been looted or that I've got gasoline tanks that are  
25 out of compliance that are leaking in the ground. That's what

1 I'm really, really uncomfortable about.

2 MR. SIMON: And Your Honor, I can tell you from --  
3 if you read our papers, you saw we've already got one of our  
4 stores that was looted two days ago.

5 THE COURT: I know, I --

6 MR. SIMON: So --

7 THE COURT: That's what really got me on this issue,  
8 is when I read that.

9 MR. SIMON: And so I think we need at least some  
10 immediate relief. So, for those stores --

11 THE COURT: You're --

12 MR. SIMON: -- that are not --

13 THE COURT: You're going to get immediate relief for  
14 closed stores. How we implement it, I got to get everybody  
15 back in here and figure that out. But for stores that are  
16 vacant, you are absolutely going to get relief, everybody is  
17 going to get relief to go protect your property.

18 Now it may very well be that there's a time period  
19 attached to that that we have to come back, but that shouldn't  
20 be that big of a deal. But you are absolutely going to be  
21 able to go protect your property, absolutely.

22 UNIDENTIFIED: (Indiscernible).

23 THE COURT: So if -- and maybe, you know, use the  
24 time, to -- you know, Ms. Heyen is sitting right here. And  
25 having a conversation with her about how you -- she's heard

1 me. She knows that you're going to get relief to go protect  
2 your property. Maybe having a conversation with her about how  
3 that gets implemented takes this from everybody has got to  
4 stand up and take a defensive position versus we can enter  
5 into that stipulation and then we're going to see what  
6 happens, you know, two weeks or three weeks from now. Just a  
7 suggestion.

8 MR. SIMON: Yes, Your Honor.

9 THE COURT: Okay. Mr. Platt, we couldn't go a  
10 hearing without hearing from you.

11 MR. PLATT: Good afternoon, Your Honor. Mark Platt  
12 for Marathon Petroleum Company, LP.

13 Since there's no cash collateral order to deal with,  
14 I don't have that normal paragraph to ask you for.

15 (Laughter)

16 MR. PLATT: But I really -- I mainly wanted to say  
17 "me too" to --

18 THE COURT: Ms. Williamson's --

19 MR. PLATT: -- what Ms. Williamson was saying. I  
20 think that we will need to be a part of that conversation. To  
21 the extent that there are rejections, we will need to have the  
22 opportunity to have protective language in there.

23 There are also re-branding issues for us that we  
24 would probably need stay relief for.

25 So I mainly am saying "me too" to what some other

1 people have said. And we will, of course, reach out directly  
2 to Ms. Heyen.

3 THE COURT: No, I got. Look, I --

4 MR. PLATT: (Indiscernible).

5 THE COURT: I used -- I may have used incorrect  
6 language, but you know, I do bankruptcy-speak, so that's what  
7 I did. All right. Let me --

8 MR. PLATT: Thank you, Your Honor.

9 THE COURT: Yes, sir.

10 Mr. Abood?

11 (No verbal response)

12 THE COURT: Mr. Abood?

13 (No audible response.)

14 THE COURT: Mr. Abood?

15 (No audible response.)

16 THE COURT: I can see you talking, but I can't hear  
17 you. Had you hit five-star on your telephone previously?  
18 Because I got to have that.

19 Ah, there you are. Yes, sir.

20 (No audible response.)

21 THE COURT: Mr. Abood, I still can't hear you. How  
22 about now?

23 MR. ABOOD: Can you hear me now?

24 THE COURT: Yes, sir. Good afternoon.

25 MR. ABOOD: Thank you. My apologies for that.

1 Norman Abood, attorney in Toledo. I represent a number of the  
2 operators in this area specifically, but not by way of  
3 limitations, Store 737, 110, 111, 295.

4 Your Honor, I raise my hand to specifically applaud  
5 the relief that you suggested for the operators because I'm  
6 about to file -- I've been holding off on filing similar  
7 motions to relief to what was filed by Ms. Tran and other  
8 counsel that have become (indiscernible) because we wanted to  
9 see what was happening and what (glitch in the audio) motions  
10 for relief.

11 Nevertheless, whatever happens, your point is right  
12 on point that the operators need the ability to continue to  
13 operate. And so, to the extent that you're going to enter an  
14 order -- which we hope that you do -- that allows them to buy  
15 gas from other sources when we are not being currently  
16 supplied by Mountain Express, there are other parameters to  
17 that, which goes to the (glitch in the audio).

18 Along with being able to buy gas from another  
19 source, we need to be able to run our credit cards through  
20 when the customers pay us --

21 THE COURT: Right.

22 MR. ABOOD: -- so that Mountain Express doesn't end  
23 up with all the cash. And then we don't have the money to pay  
24 for the gas and buy more gas.

25 THE COURT: Yeah.



1 MR. ABOOD: So that's a joined concern that we ask  
2 you incorporate in any such order.

3 The third part of the relief, obviously there are  
4 funds that have already been run through their credit card  
5 system that are being held by Mountain Express. And I know  
6 that might not be something you want to deal with at this  
7 point in time, but it is of critical importance to the local  
8 operators. Some of my clients are literally on a shoestring.

9 THE COURT: Right. And --

10 MR. ABOOD: So we ask (indiscernible) --

11 THE COURT: And you heard the problem, right?

12 There's less than \$4 million of cash on hand. You got --

13 MR. ABOOD: Yes.

14 THE COURT: You got a million dollars worth of taxes  
15 and all sorts of other things. Yeah, we're not going to get  
16 that addressed today.

17 The credit card issue was front and center in the  
18 Singh Tran motion, and I -- it was always incorporated. I  
19 understand the need for that. I just -- I was just  
20 shorthanding, and I didn't mean to not include that.

21 MR. ABOOD: Thank you, Your Honor.

22 THE COURT: All right. Thank you.

23 Mr. Judd, you raised your hand.

24 MR. JUDD: Yes, Your Honor. Josh Judd on behalf of  
25 Legacy Acquisitions and the Nancy Ratto 2007 Trust.

1           Your Honor, just very briefly. My clients, although  
2 they have a very small role in this case in the grand scheme  
3 of things, this case is very important to them. They have  
4 three locations, two of which I think are -- will be addressed  
5 through your comments earlier, that will be vacant by the end  
6 of business today, based upon Mr. Pomerantz's representation.

7           One of the locations -- and I would just ask that  
8 the Court consider it -- does have a subtenant. And to the  
9 extent that the Court would consider that any order entered by  
10 the Court would allow those landlords where a subtenant is  
11 operating to engage with the subtenant immediately to forego  
12 any -- or to engage with them to preserve any potential value.  
13 And that may be phased over a couple of weeks, but at least we  
14 can start having discussions with those subtenants to see if  
15 an agreement can be reached to maximize value.

16           THE COURT: All right. Thank you.

17           All right. Let me.

18           (Pause in proceedings)

19           THE COURT: Mr. Elrod? And I know you've got --  
20 I've thrown a lot at you, you have a lot of moving pieces.  
21 Where are we?

22           MR. ELROD: Well, Your Honor, we do have some  
23 progress with respect to Oak Street. And I understand there  
24 was some discussion while we were talking regarding the  
25 appointment of a trustee. I'm not sure in what form, but that

1 would certainly -- as indicated, that would be our preferred  
2 path.

3 Your Honor, I'm sure Mr. Serajeddini will correct me  
4 if I'm wrong, but the concept would be that Oak would be  
5 willing to give us a week or two -- or the trustee a week or  
6 two, I should say - the parties, generally, a week or two to  
7 work through any expressions of interest or potentially  
8 interested parties who are -- you know, want to come to the  
9 table --

10 THE COURT: Uh-huh.

11 MR. ELROD: -- you know, felt like they were not  
12 given the attention they should have gotten, or new entrants  
13 into the process, to give them a chance to, you know, lodge a  
14 bid or give their ideas, so that we can try to monetize these  
15 assets for the benefit of, you know, the various creditor  
16 constituents.

17 THE COURT: So let me walk through that. So -- and  
18 forget the time period for a second. Let's just say it's two  
19 weeks, but it can be -- you know, it can be more or less, but  
20 let's just assume that it's two weeks.

21 So the Debtor is going to shut down operations  
22 tomorrow. The trustee -- is it your -- is it your suggestion  
23 that the trustee would take -- that the shutdown wouldn't  
24 actually occur, but that the trustee would take over  
25 operations tomorrow for two weeks, funded by your group?

1 MR. ELROD: Your Honor, the suggestion would be that  
2 the Debtors do not cease operations tomorrow.

3 THE COURT: No, no. I got that. I corrected  
4 myself, at least I thought I did.

5 So -- but that the trustee would step in and the  
6 trustee would continue the oversight for a period of two  
7 weeks, would investigate alternatives.

8 During that two weeks, the Debtors that aren't  
9 getting fuel would have to have the right to buy fuel. I've  
10 sat hard enough on them for too long.

11 MR. ELROD: It's the lifeblood of the business, of  
12 course.

13 THE COURT: Right.

14 MR. ELROD: So --

15 THE COURT: Plus I mean, quite frankly, if it -- if  
16 nothing else, it's mitigation of a claim, which may not  
17 matter, I got that, and probably doesn't, given the grand  
18 scheme of things. But perhaps it's preservation of going  
19 concern value. But it would just be they can buy fuel and  
20 they would come back and that order would have a life to it of  
21 two weeks.

22 And as pointed out -- and I need to be precise about  
23 it -- those folks have to have the ability to charge credit  
24 cards on a system that let's them get the money. They -- I  
25 mean, I'm going to guess that these folks have had dollars

1 going to the Debtor for gas that they paid for, not from the  
2 Debtors, and that's a problem. But it would stop during this  
3 two-week period.

4 They get to bring in -- if they're buying fuel --  
5 and I -- it becomes an administrative problem, I got it,  
6 because, if they're buying gas from someone else, then they  
7 should be able to charge credit cards that go to their  
8 account. If they're selling fuel that the Debtors delivered,  
9 then I got it that the existing arrangement ought to stay in  
10 place.

11 But folks who aren't getting gas, haven't gotten  
12 gas, they've got to be able to go out and operate and they  
13 can't come to the Debtor for the money. They've got to be  
14 able to collect their own receipts, again, you know, be it for  
15 two weeks or whatever it is you think you need.

16 I mean, I'm guessing, in large part, that the two  
17 weeks is driven by the fact that there's a little less than  
18 \$4 million. I'm assuming that your group probably doesn't  
19 want another capital raise.

20 Do you have any idea what the burn is at this point?

21 MR. ELROD: Your Honor, I think Mr. Healy is the  
22 best source of information --

23 THE COURT: Okay.

24 MR. ELROD: -- on that.

25 THE COURT: Yeah. I didn't ask him that question

1 and I -- you know, I don't know what's accumulating or not, I  
2 just don't know.

3 MR. ELROD: I would point out, Your Honor -- I think  
4 you alluded to these -- a couple of issues:

5 Obviously, if there is inventory that is our  
6 collateral, we reserve all rights on that and would want all  
7 that, obviously, to be funded back to the Debtor, so --

8 THE COURT: Sure.

9 MR. ELROD: You know, it's kind of a commingle --  
10 potential commingling-type problem there with proceeds that  
11 may come in from some of these dealers. I just want to make  
12 sure that we're -- you know, we're certain of that.

13 THE COURT: And I don't have the foggiest notion how  
14 we sort that out.

15 MR. ELROD: It's messy for sure.

16 THE COURT: Yeah. I mean, I -- are we dealing with  
17 -- like we're supposed to deliver -- I'm making this up. We  
18 are supposed to deliver fuel every Tuesday and we've only been  
19 delivering every other Tuesday, so they've been going out and  
20 buying fuel from someone else in the off weeks to make it  
21 work. I mean, oh, my goodness, I don't know how you figure  
22 that one out.

23 MR. ELROD: It's a pick-it.

24 THE COURT: You know, they got to -- you know, if I  
25 take the Singh Tran pleadings at their face, which I do until

1       somebody shows me different, they're easy because they haven't  
2       gotten any gas. And so they put in their own -- I call it a  
3       "black box," but you know what I'm talking about, the machine  
4       that takes credit cards and it runs through one of those  
5       service providers. That's easy for them. If there's -- if  
6       it's mixed, I don't know how in the world we do that.

7               If you know of some expert or somebody who says, oh,  
8       yeah, there's an easy way to do this or we can -- you know, we  
9       can stick a stick in the tank and take a measurement and we  
10      know that it's that many gallons, I mean, all fine by me. But  
11      you know, we need to do that times three or four or 500.

12             MR. ELROD: Right, right.

13             We have been approached by one potential operator  
14      who has expertise in this business, I know from personal  
15      experience in an unrelated matter.

16             Your Honor, I will say, to the extent you're  
17      inclined to grant that relief -- and of course, it seems only  
18      fair in some respects. We have fuel that's actually not being  
19      delivered.

20             THE COURT: Right.

21             MR. ELROD: We would like to avoid the prospect of a  
22      free-for-all, so we would like some type of notice because it  
23      may be that people just want to get free from their contracts  
24      when they have gotten fuel deliveries.

25             THE COURT: Right.

1 MR. ELROD: So we would like some type of procedure  
2 in place, where it's not just a blanket grant, it's more  
3 targeted.

4 THE COURT: So I'm going to let you think about that  
5 one and so -- again, that's a -- that's hard and we do -- I  
6 got it. I mean, we don't want this to -- we don't want to  
7 make it worse.

8 But I got to give people -- I mean, I'm going to  
9 assume that people are, in general, good and acting in their  
10 honest self-interest, which is just okay with me. And I'm not  
11 trying --

12 MR. ELROD: It's like mix it --

13 THE COURT: Not -- yeah, I'm not trying to steal,  
14 just trying to --

15 MR. ELROD: Make a buck.

16 THE COURT: -- just trying to get until tomorrow.

17 The other thing that would have to be is that all of  
18 the prohibitions against talking have to come to an end.  
19 There have to -- people have to be able to talk to their  
20 subtenants, people have to be able to talk to you, people have to  
21 be -- you have to be able to talk to people. So all of the  
22 restrictions on communications would have to come to an end.

23 You know, if you got to a point where you -- you  
24 know, you thought, you know, an NDA was appropriate, you know  
25 how to do that --



1 MR. ELROD: Sure.

2 THE COURT: -- for a specific person. But the  
3 general prohibitions would all have to come to an end, so that  
4 people could talk.

5 MR. ELROD: We would agree with that, Your Honor.  
6 That's one point, and I believe that was one of Mr. Pomerantz'  
7 points, if I understood him correctly --

8 THE COURT: Yeah.

9 MR. ELROD: -- when he was running through them.  
10 That's one point that we would agree with. We -- in fact, we  
11 thought those were more restrictive than they should have been  
12 to begin with because we anticipated a situation like this.

13 THE COURT: But --

14 MR. ELROD: In fact, in --

15 THE COURT: Let's move on. Keep --

16 MR. ELROD: Okay.

17 THE COURT: -- just on my issues.

18 MR. ELROD: Thank you, Your Honor.

19 THE COURT: No, no. Don't go away quite yet.

20 So what we're talking about doing is that I would --  
21 and this is a question, it's going to be inartfully asked.  
22 But what you're asking me to do is to appoint an 11 Trustee  
23 tonight with -- hopefully, with the understanding that it  
24 would be Ms. Northrup.

25 That prohibitions against communications would come

1 to an end.

2 We would set a hearing in -- well, you tell me  
3 because, again, you're going to fund it. But we would set a  
4 hearing in, you know, two weeks, a week, whatever you think is  
5 rational, that we would consider further relief, including my  
6 own *sua sponte* motion to convert to a Chapter 7.

7 And again, I've told you before. I mean, you can  
8 make the argument and preserve your -- I'm not going to  
9 dismiss the case, not based on -- unless there's something out  
10 there that I don't understand that I haven't yet been told  
11 because this needs to -- this needs to roll through to a  
12 conclusion, whatever that conclusion is.

13 With respect to the gas purchasing issue, my sense  
14 is that, one, I'm -- and you all have reached an agreement.  
15 But I'm going to grant the Singh Tran motion in some form or  
16 fashion. That's the only one that was set for today. And  
17 then I'm going to give you a day or two to figure out if there  
18 is an easy way to do it. In other words, if you sign on to  
19 this order, then you can do this, and we can circulate it; or,  
20 if people need to file their own individual motions, which I  
21 think they have a right to do and I'm obligated to take them  
22 up promptly, which I will, we can deal with it that way.

23 If there's a way to come up and say, hey, if you  
24 sign off on this order, then, you know, over the next two  
25 weeks -- and it gives you the time to look at sales and that

1 sort of thing. You know?

2 MR. ELROD: In terms of timing of the hearing, Your  
3 Honor, what I would suggest is perhaps a status conference in  
4 a week and then another one two weeks out because maybe, if we  
5 quickly are able to run this to ground and there's just  
6 nothing there --

7 THE COURT: Sure.

8 MR. ELROD: -- in which case, we'd, you know,  
9 prefer --

10 THE COURT: So let me ask you this. I don't have a  
11 problem with any of this. I would like to have a status  
12 conference, say maybe Monday or Tuesday. I just want to know  
13 what's going on. You --

14 MR. ELROD: Right.

15 THE COURT: Everybody has got my antennae up. I'm  
16 showing some faith in people that I've known a long time, and  
17 so I'm going to defer. But I'm going to question, I'm going  
18 to poke, I'm going to prod, I'm going to think about it. I  
19 want to know that this is headed in a direction. But my  
20 thought is to have a status conference, you know, on Monday or  
21 Tuesday, just to tell me what's going on.

22 And it may be that a trustee files a one-page report  
23 that says I got this all under control, I don't need a  
24 hearing, you know, we'll see you at the next hearing, which  
25 you're telling me ought to be sort of, you know, the 24th or

1 25th -- is that what I heard you say?

2 MR. ELROD: Your Honor, I was just saying one a week  
3 out and then the following week. So I'm not wedded to any  
4 particular dates, but I understand the Court's desire and  
5 agree with you.

6 THE COURT: Okay. So let's do this. What I'm going  
7 to do is I'm going to set a continued hearing on all matters,  
8 including my own *sua sponte* motion to convert the case to a 7.  
9 I just want it out there. I want everybody to see it, it will  
10 be reflected with a docket entry. And again, I'm putting that  
11 out there because that's where I'm going to drive it if we  
12 don't make some progress really quick.

13 Can we say September the 1st at 11:00 o'clock  
14 Central Time?

15 (Participants confer.)

16 THE COURT: Status --

17 MR. ELROD: 11:00 Central, Your Honor?

18 THE COURT: I'm -- yes, Central. Yes.

19 Status conference August the 25th at 10:30 Central.

20 And then I think what I'm going to do -- are we able  
21 to say -- again, subject to her being available and not having  
22 a conflict, which I can't imagine she does -- but can we say  
23 that the Chapter 11 Trustee, if I appoint an 11 Trustee right  
24 now, that it's going to be Ms. Northrup?

25 MALE SPEAKER: It looks like that can happen, Your

1 Honor. And I just spoke to Ms. Northrup the last time I  
2 stepped out, and she has no conflicts --

3 THE COURT: Okay.

4 MALE SPEAKER: -- and would take the case.

5 THE COURT: All right. So what I'll do is I'll  
6 grant the motion to appoint an 11 Trustee effective  
7 immediately. So, as soon as you -- I know you've got to go  
8 get your order done. But if you would just let Mr. Alonzo  
9 know as soon as that's been uploaded.

10 And I want an order that says that all communication  
11 prohibitions come to an end; that we have -- because I want  
12 this to be circulated -- that we have a status conference on  
13 the 25th and a continued hearing on September the 1st.

14 And then what I'm going to do is -- did you all come  
15 to terms on the Tran Singh -- I keep saying it different ways,  
16 Singh Tran, Tran Singh, whichever, the two of them in the  
17 back. Did you all come to an agreement on how we deal with  
18 their ability to buy fuel?

19 MALE SPEAKER: I have not had a chance to speak with  
20 them, Your Honor. I don't know if others on our team have,  
21 but --

22 THE COURT: All right. Ms. Heyen, did you talk to  
23 those folks?

24 MS. HEYEN: I didn't have a chance to --

25 THE COURT: Okay.

1 MS. HEYEN: -- explore it in detail, Your Honor, but  
2 happy to talk to them right now.

3 THE COURT: So why don't we do this? Ms. Tran,  
4 Mr. Singh, whoever is going to handle the hearing?

5 MS. TRAN: (Indiscernible).

6 THE COURT: Could you come up, please? Thank you.  
7 Since we've got a hearing and based upon the  
8 allegations that you've made in your motion --

9 MS. TRAN: Yes, Your Honor.

10 THE COURT: -- would you have any objection to an  
11 order that permits you to buy fuel and install the credit card  
12 machine, whatever appropriate term that is, on a temporary  
13 basis? We have a continued hearing on September the 1st,  
14 along with the other hearing.

15 MS. TRAN: I think that would be fine, Your Honor.

16 THE COURT: If you would craft an order that  
17 accomplishes that and gives your folks the comfort they need,  
18 run it by the U.S. Trustee and run it by the lender, and also  
19 I guess it would be run it by Ms. Northrup if she -- if  
20 Ms. Northrup has been appointed, no need to run it by the U.S.  
21 Trustee. If Ms. Northrup hadn't been appointed, then run it  
22 by the U.S. Trustee. Let Mr. Alonzo know as soon as that's  
23 been uploaded and I will sign that.

24 MS. TRAN: Okay.

25 THE COURT: Okay?

1 MS. TRAN: That works, Your Honor.

2 THE COURT: All right. For those other folks -- I'm  
3 sorry, Mr. Gibbs.

4 MR. GIBBS: We'd like to see a copy, also.

5 THE COURT: Oh, of course, yes, Mr. Gibbs, as well.

6 So, with respect to --

7 MALE SPEAKER: Your Honor?

8 THE COURT: Hold on, let me finish.

9 With respect to the other folks who are in the same  
10 place, Mr. Elrod, what I want you to do is I want you to use  
11 the rest of this evening and tomorrow to see if you can come  
12 up with a structure that you can live with which lets people  
13 who need to buy fuel buy fuel. And if not, I'll take  
14 individual emergency motions and I'll just deal with them as  
15 they get filed.

16 But the Tran Singh motion was the only one that was  
17 set for hearing today, so that's the only one I'm going to  
18 hear. And I'm hoping that folks can come up with a procedure  
19 where we don't have to have 250 emergency motions to buy fuel.

20 Mr. Simon, I know you've got your motion that's  
21 sitting out there. When do you want a hearing?

22 MR. SIMON: And it --

23 THE COURT: Do you want to talk to Mr. Elrod and  
24 then call Mr. Alonzo? Do you want me to give you a hearing  
25 date now?

1 MR. SIMON: You can give me a hearing date now, Your  
2 Honor.

3 THE COURT: Okay.

4 MR. SIMON: And that -- then, if I can -- I'll talk  
5 to Mr. Elrod. If Ms. Northrup is appointed, I'll talk to her.  
6 If we can get a result beforehand, great; if not, then --

7 THE COURT: Okay. When do you --

8 MR. SIMON: -- (indiscernible).

9 THE COURT: When do you want your hearing?

10 MR. SIMON: We'd request it by Friday, Friday at  
11 5:00 o'clock is I think what we requested --

12 THE COURT: Okay.

13 MR. SIMON: -- or Friday at --

14 THE COURT: You've got it at 3:30 on Friday.

15 MR. SIMON: Yes, Your Honor.

16 THE COURT: So, if you'd notice it out -- and if you  
17 get it resolved, you know, I would very much like to be, you  
18 know, off the airplane, floating in my pool at 3:30.

19 (Laughter)

20 THE COURT: But if I have to be here, I will be  
21 here. But I would appreciate the courtesy of just letting  
22 Mr. Alonzo know where you stand. Okay?

23 MR. SIMON: Will do, Your Honor. Thank you.

24 THE COURT: Okay.

25 UNIDENTIFIED-PH: Your Honor, may I point out for



1 the Court, I was looking at my calendar --

2 THE COURT: Sure.

3 UNIDENTIFIED-PH: -- and there -- the bar date order  
4 in the case is the 28th of -- the bar date is the 28th of  
5 August.

6 THE COURT: Okay.

7 UNIDENTIFIED-PH: And with everything going on, does  
8 it make sense to have folks filing --

9 THE COURT: It probably does, but I want  
10 Ms. Northrup to make that decision.

11 UNIDENTIFIED-PF: Okay.

12 THE COURT: It seems to me that that should be her  
13 decision.

14 UNIDENTIFIED-PF: Okay.

15 THE COURT: Okay?

16 UNIDENTIFIED-PF: Thank you.

17 THE COURT: Or someone else's, if she disagrees.  
18 But I think she ought to get the opportunity to say, yes, I  
19 agree, no, I don't --

20 UNIDENTIFIED-PF: And --

21 THE COURT: -- if she's going to be in charge.

22 UNIDENTIFIED-PF: I just wanted to bring it to the  
23 Court's attention.

24 THE COURT: No. Thank you very much.

25 Ms. Williamson, I don't think I addressed any of

1 your issues today. I think it's probably going to come up  
2 really quick. But I don't think we did anything to you today,  
3 did I -- did we?

4 MS. WILLIAMSON: No, Your Honor.

5 I do want to point out one thing. The point of sale  
6 equipment, at least in the Valero-branded stores, those credit  
7 card receipts come to Valero --

8 THE COURT: Right.

9 MS. WILLIAMSON: -- and we've been releasing the net  
10 number to the bank account with the DIP lender.

11 It's very complex. If we're going to be selling  
12 branded fuel that the distributors are buying individually,  
13 and we'll work with -- we'll be willing to work with whoever.  
14 I just want to make sure everyone understands those receipts  
15 come to Valero.

16 THE COURT: Got it.

17 So what I hope that this is limited to. And again,  
18 I don't know the scope of the problem because everyone stands  
19 up and says "me too" the moment I do something, is that -- you  
20 know, I had a very compelling motion filed that said we  
21 haven't gotten fuel in a long time, we've been out doing the  
22 best we can, we need the ability to go buy fuel, we don't want  
23 to violate the automatic stay, we don't want to get in any  
24 more trouble than we're already in because those folks already  
25 had an issue, if you remember. That's all I've addressed

1 today.

2 And I got Mr. Elrod's comment that this is just a --  
3 this is a potentially huge problem. I don't want a  
4 potentially huge problem. I also -- if people aren't getting  
5 fuel, you know, it doesn't make much sense to run a gas  
6 station if you can't sell gas. And so -- again, I don't know  
7 which stations are getting fuel, I don't know what stations  
8 aren't.

9 I got it, Ms. Williamson, it's going to be a huge  
10 problem. And I -- you know, we're just going to have to work  
11 through it one at a time. I -- but I'm not going to give up  
12 and say it's too hard to address because, if there are people  
13 out there that are trying to make a living, I'm going to give  
14 it everything I can to make sure they get that opportunity.  
15 If they fail, they fail because of something that, you know,  
16 they couldn't do, not because of something that we couldn't  
17 enable them to do.

18 Oh, Ms. Williamson -- whoops. Did you hang up on  
19 me --

20 MS. WILLIAMSON: I --

21 THE COURT: -- or --

22 MS. WILLIAMSON: No, no, no. I muted you.

23 THE COURT: Ah.

24 MS. WILLIAMSON: Your Honor, we -- no, Valero is on  
25 the same page, we want to work with our distributors as much

1 as we -- with our dealers as much as we can to make sure they  
2 can survive.

3 THE COURT: Okay. All right. Mister -- thank you.  
4 Mr. Ruzinsky.

5 MR. RUZINSKY: Thank you, Your Honor. Bruce  
6 Ruzinsky for ExxonMobil.

7 We have some of the same issues and concerns as  
8 Valero and Marathon does and we simply want to be a part of  
9 the process (indiscernible) to get fuel to operators  
10 (indiscernible) stations that sell Exxon or Mobil-branded  
11 fuel. And so we're very much interested.

12 THE COURT: Got it.

13 And so, to the extent that all of you have issues,  
14 you all know to ask for time and I will make the time. You  
15 know, it's just hard for me to forecast what I don't know.  
16 But as you all see it unfold, let me know ASAP and I will --  
17 we will try to work through it.

18 Mr. Howley.

19 MR. RUZINSKY: Thank you, Your Honor.

20 THE COURT: Yes, sir.

21 MR. HOWLEY: Good evening, Your Honor. Can you hear  
22 me?

23 THE COURT: Yes, sir. Loud and clear. Thank you  
24 for checking.

25 MR. HOWLEY: Hi. Tom Howley of Howley Law, I

1 represent GPM Investments, LLC, who's been referenced  
2 throughout this hearing. And they're a subsidiary of ARKO, so  
3 we've been referred to as "ARKO" or "GPM."

4 The management team is on the phone. Obviously, we  
5 know this business. You know, our deal wasn't accepted, but  
6 we still want to be part of the solution here, Your Honor. In  
7 all of the discussion about fuel, you know, subject to  
8 logistics, we serve a lot of these brands and we think we can  
9 be part of the solution. So I wanted to state for the Record  
10 that we are on standby, ready to help with fuel supply, to  
11 keep these dealers alive. And I just wanted to note that for  
12 the Record. And we're prepared to work with the trustee to  
13 help.

14 THE COURT: Thank you.

15 The only thing, Mr. Howley, that I'll take issue  
16 with is don't wait for the call. You make the call. And once  
17 Ms. Northrup gets in place, you reach out. She answers her  
18 phone.

19 MR. HOWLEY: Now that the restrictions are lifted,  
20 Your Honor, we're going to make a lot of calls.

21 THE COURT: Terrific. Thank you.

22 Mr. Steen?

23 (No verbal response)

24 THE COURT: Ah, Mr. Steen, had you hit five-star on  
25 your phone? There you go. All right.

1 MR. STEEN: I apologize, Your Honor.

2 (Indiscernible) Steen with Thompson (indiscernible) here on  
3 behalf of Mountain View and its related entities.

4 Your Honor, we have two categories of executory  
5 contracts, which makes our position a little bit unique. But  
6 one of them is we conduct a majority of the compliance and  
7 inspections on a monthly basis for the MEX facilities in the  
8 Continental United States, which is severely problematic for  
9 us.

10 Number one, we haven't been being paid regularly.

11 And second, we also have a series of fuel supply  
12 agreements with the Debtor for various (indiscernible)  
13 locations at airport facilities throughout the United States.

14 THE COURT: And Mr. Steen --

15 MR. STEEN: (Indiscernible)

16 THE COURT: -- if you can just help me. Just,  
17 again, I -- you know, I'm trying to process so much  
18 information. Are you the affiliate or are you the successor  
19 to the affiliate?

20 MR. STEEN: Of who, Your Honor?

21 THE COURT: Of the Debtor. Did -- originally,  
22 compliance was done by an affiliate. And then I think the  
23 papers say they were replaced. I just don't know who you are.

24 MR. STEEN: (Indiscernible) we have the current  
25 contract. We're not a --

1 THE COURT: Okay.

2 MR. STEEN: -- an affiliate of the Debtor at all.

3 THE COURT: Okay.

4 MR. STEEN: And so with respect to the Conrac fuel  
5 supply agreement, we require almost daily deliveries of fuel,  
6 and we've been having continual problems with that and have  
7 been waiting to see -- to file our motion for relief, to see  
8 how the case progresses and whether things have been done. So  
9 we're a little bit unique in that we're not a single store  
10 operator or a multi-store operator, but we service the  
11 (indiscernible) return centers and provide fuel for those  
12 locations.

13 We're experiencing the same level of frustration and  
14 difficulty in procuring fuel on a regular basis and it is  
15 taking a toll on our client's business. We've had some  
16 discussions with Debtor's counsel about those, but would  
17 request that we also be included within the relief --

18 THE COURT: No.

19 MR. STEEN: -- as far as --

20 THE COURT: So the answer -- no one is included  
21 other than the Tran Singh clients.

22 If I -- what I suggest you do, have the conversation  
23 tomorrow with the lender and the trustee. If you don't get a  
24 satisfactory answer, you're authorized to file something on an  
25 emergency basis. But I'm not going to start -- once I open

1       that door, I can't stop it. So, if you can't get happy  
2       tomorrow, then file an emergency pleading. Okay?

3               MR. STEEN: Sure, Your Honor. Thank you.

4               THE COURT: All right. Thank you, sir.

5               Ms. Surinak, I did not mean to ignore you. I know  
6       you've been raising your hand for a while. Yes, ma'am.

7               MS. SURINAK: Thank you, Your Honor. Can you hear  
8       me okay?

9               THE COURT: Loud and clear. Thank you.

10              MS. SURINAK: Again, for the Record, Ashley Surinak  
11       of Kirkland & Ellis for Blue Owl.

12              I just wanted to circle back following Mr. Elrod's  
13       earlier representation regarding Blue Owl's support for this  
14       brief period during which the trustee and the DIP lender  
15       intend to work together to revisit indications of interest  
16       previously received. Blue Owl is supportive -- and we just  
17       wanted to confirm that for the Court -- of the process. And  
18       with the communication restrictions lifted, we intend to  
19       engage with anyone and everyone during this period to  
20       facilitate the best outcome.

21              And additionally, Blue Owl intends to take steps to  
22       put proper management services in place at their properties,  
23       including environmental services, to get the right folks on  
24       the ground to make sure that these properties are safe and  
25       secure during the interim period. And we intend to reach out



1 to Mr. Elrod and the trustee, once appointed, to discuss this  
2 further and to ensure all the proper protocols are in place.

3 THE COURT: Absolutely.

4 And that reminds me of a third point I left out of  
5 that order, Mr. Elrod, is that, to the extent that properties  
6 are vacant, that stay relief is granted. Again, just tie it  
7 all to September 1st, so that parties can take necessary steps  
8 to secure their property and to provide for the health and  
9 safety of the surrounding communities.

10 Ms. Surinak, thank you for reminding me of that.

11 MS. SURINAK: Thank you, Your Honor.

12 THE COURT: All right. Thank you.

13 And Mr. Ralston.

14 MR. RALSTON: Thank you, Your Honor.

15 One nit, but a nit that's important to my client.  
16 And this is Mark Ralston on behalf of MEX 1123 Lane, one of  
17 the landlords.

18 Is it possible, Your Honor, that, as part of the  
19 order, there can be attached a list of the -- whether they're  
20 qualified or not qualified, of the folks that showed interest  
21 in buying the Debtor's assets, with a contact person, so that  
22 folks like my client, who aren't sophisticated in the  
23 business, will know who to reach out to?

24 THE COURT: Yeah. Mr. Ralston, the short answer is  
25 no. I don't understand the impact of that, I don't know what

1 I'm being asked to do, so -- and there certainly hasn't been  
2 any notice for that request, so the answer is no.

3 If you, talking to -- again, I've known this trustee  
4 for 30 years. If you have any issues in transparency or  
5 getting information, then file an emergency pleading and I'll  
6 take it up. Okay?

7 MR. RALSTON: Thank you, Your Honor.

8 THE COURT: All right. Thank you.

9 All right. Anyone else before I go back to  
10 Mr. Pomerantz?

11 (No verbal response)

12 THE COURT: All right. Mr. Pomerantz, it is my view  
13 -- and again, I know that you have worked extremely hard, that  
14 you've been very diligent, and most likely you are working  
15 without compensation, unless something miraculous occurs. It  
16 is my view, unless you feel differently, that I would simply  
17 note your withdrawal as counsel today with the appointment of  
18 the Chapter 11 Trustee.

19 Feel free to submit an order that you find to be  
20 acceptable. Obviously, file your final fee app and, you know,  
21 do whatever it is you need to do. But I don't think that you  
22 should continue to incur the expense of having to participate,  
23 not knowing who you take direction for, and obviously not  
24 knowing that you're going to be compensated.

25 Again, I appreciate everything that you've done. It

1 just didn't work and they don't always work. And I -- again,  
2 I -- as you said it before, take your clients how you find  
3 them. But if you'll get that to me, I'll take care of that.

4 Mr. Healy, with respect to you, I want you to meet  
5 with the Chapter 11 Trustee and she can -- if she says that,  
6 you know, I can't pay you or I don't need you, then, if you --  
7 I will sign the same withdrawal order and you go through the  
8 same process. If she says no, I need you for two weeks or a  
9 week and that fits within the budget, then that decision is  
10 yours. I want to make that very clear. No one can compel you  
11 to work, but I want you to have the conversation with her.

12 Fair enough?

13 MR. HEALY: Absolutely. Thank you, Your Honor.

14 THE COURT: All right. Thank you. And if  
15 someone --

16 MR. POMERANTZ: Your Honor?

17 THE COURT: I'm sorry.

18 MR. POMERANTZ: Your Honor, we have two independent  
19 directors on the board. They have been, as you can imagine,  
20 working (indiscernible) hard over the last few months  
21 (indiscernible) the company, I think they would prefer to  
22 resign (indiscernible) --

23 THE COURT: Do that --

24 MR. POMERANTZ: -- not have to incur  
25 (indiscernible).

1 THE COURT: I totally agree. And if you would do  
2 that by order so it's very clear, make sure they sign off on  
3 them, but if I could ask you to prepare those for them.

4 And obviously, if you would also convey that to  
5 Raymond James, I think they're -- the need for their services  
6 has come to an end, and I don't want them -- I don't want them  
7 thinking that they've got obligations. So if you'd go ahead  
8 and have them prepare an order that they find acceptable, I'll  
9 sign that as soon as I see them all.

10 All right?

11 MR. POMERANTZ: We will do that, Your Honor. I  
12 would harken back. We had a quarterly (indiscernible) Your  
13 Honor and a certificate of no objection. We would ask that  
14 (indiscernible) money set aside --

15 THE COURT: Yeah.

16 MR. POMERANTZ: (Indiscernible), Your Honor.

17 THE COURT: Mr. Pomerantz, I signed it this morning.  
18 I just haven't had the staff here because I've been on the  
19 bench all day. But I signed it this morning.

20 MR. POMERANTZ: Thank you, Your Honor.

21 THE COURT: Yes, sir.

22 All right. Anything else that we need to talk  
23 about?

24 (No verbal response)

25 THE COURT: All right. U.S. Trustee, get me that

1 order. Let me ask. Can you get that order done with my  
2 orally requiring the appointment of an 11 Trustee, or do you  
3 need an order from me directing you to appoint an 11 Trustee?

4 UNIDENTIFIED-TRUSTEE: Unfortunately, I think the  
5 U.S. Trustee is going to want to see a written order.

6 THE COURT: Then I'm going to sit right here and do  
7 it and it will be on the docket by the time you get back  
8 downstairs to your office.

9 UNIDENTIFIED-TRUSTEE: All right. Thank you, Judge.

10 THE COURT: All right. Thank you.

11 All right. With that, everyone -- and I want to say  
12 this. This is a fluid situation, it's ugly. I'm not  
13 comfortable, I'm not happy, but it's where we are.

14 If anything changes, anyone needs anything, you  
15 don't hesitate, you reach out, you ask for court time, and  
16 we'll deal with the problems on a one-off basis as they pop  
17 up. All right?

18 All right. Thank you, everyone. You're all  
19 excused. I'm going to do the U.S. Trustee's order, so I'm not  
20 going to move. Thank you.

21 COUNSEL: Thank you, Your Honor. Thank you, Your  
22 Honor.

23 (Proceedings concluded at 5:56 p.m.)  
24

25 \* \* \* \* \*

1                   I certify that the foregoing is a correct transcript  
2                   to the best of my ability due to the condition of the  
3                   electronic sound recording of the ZOOM/video/telephonic  
4                   proceedings in the above-entitled matter.

5                         /S./      MARY D. HENRY      

6                   CERTIFIED BY THE AMERICAN ASSOCIATION OF  
7                   ELECTRONIC REPORTERS AND TRANSCRIBERS, CET\*\*337  
8                   JUDICIAL TRANSCRIBERS OF TEXAS, LLC  
9                   JTT TRANSCRIPT #67622  
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